ANNEXATIONS IN URBAN COUNTIES: MISSOURI'S SCHEME AND A PLAN FOR REFORM

*STEVEN H. GOLDBERG**

I. INTRODUCTION

Annexation is the primary method municipalities use to extend their boundaries.[1] Though the procedures often vary,[2] the annexation pro-

* B.A., University of Rochester, 1980; J.D., Washington University, 1985.

1. Annexation generally is defined as: "the addition of territory to a municipal corporation as an integral part; generally it involves joining all or part of the territory of an unincorporated, less populous, or subordinate local unit to that of a larger unit, usually incorporated, offering a more complete array of municipal services." NATIONAL LEAGUE OF CITIES, ADJUSTING MUNICIPAL BOUNDARIES 1 (1966) [hereinafter cited as NATIONAL LEAGUE]. *See generally* D. MANDELKER, D. NETSCH & P. SALSICH, JR., STATE AND LOCAL GOVERNMENT IN A FEDERAL SYSTEM 41-65 (1983) (for an overall view of local government incorporation and annexation) [hereinafter cited as D. MANDELKER]; Cotrell & Stevens, *The 1975 Voting Rights Act, Annexation Policy and Urban Growth in the Sunbelt*, 3 URB. L. REV. 1-10 (1979) (tracing the history of annexation in the United States).

Between 1950 and 1970, 171 of 177 southern and western municipalities having a population of 50,000 or more made significant annexations. INTERNATIONAL CITY MANAGEMENT ASSOCIATION, THE MUNICIPAL YEAR BOOK 19 (1983) [hereinafter cited as THE MUNICIPAL YEAR BOOK].

2. Annexations have been classified into five key categories: 1) *Legislative determination*—in which special acts of the legislature make municipal boundary changes; 2) *Popular determination*—in which the people determine by election if a proposed municipal boundary change will take place; 3) *Municipal determination*—in which a unit of local government is authorized to extend its boundaries by unilateral action of its governing body; 4) *Judicial determination*—in which the courts determine if a proposed boundary change shall take place; and 5) *Quasi-legislative*—in which an independent,

cess provides a useful tool for promoting orderly growth.[3] In developing metropolitan areas, annexations cause municipalities and county governments to compete for the benefits of unincorporated territory.[4] This competition between governmental entities creates conflict which can lead to disorganization, inequitable and inefficient delivery of services, poor planning, and inconsistent zoning.[5]

This Note focuses on the annexation process in Missouri's urban areas.[6] First, the Note traces the history and development of annexation

---

nonjudicial tribunal determines whether a proposed annexation shall take place. *See* SENGSTOCK, ANNEXATION: A SOLUTION TO THE METROPOLITAN AREA PROBLEM 9-39 (1960) reproduced in NATIONAL LEAGUE, *supra* note 1, at 4. *See also* HORAN & TAYLOR, EXPERIMENTS IN METROPOLITAN GOVERNMENT (comparing alternative methods of local government in metropolitan areas); Woodroof, *Systems and Standards of Municipal Annexation Review: A Comparative Analysis*, 58 GEO. L.J. 743 (1970) (reviewing and comparing state annexation procedures and substantive standards); *Report of Annexation Committee*, NATIONAL INSTITUTE OF MUNICIPAL LAW OFFICERS, 42A MUN. L. REV. 22-31 (1979) (listing annexation methods found in particular states).

3. NATIONAL LEAGUE, *supra* note 1, at 1. NATIONAL LEAGUE notes six primary reasons for advocating annexations in urban areas: 1) a city needs a fringe area for continued orderly growth and prosperity of the metropolitan area; 2) a city needs fringe land to plan and provide public service facilities such as water and sewer systems, street extensions, and recreational facilities on a rational and economic basis; 3) to bring the fringe area within city land use controls; 4) to subject the fringe land to city protective regulations and provide police and fire services; 5) to regulate and deliver health and sanitation services to the fringe area; and 6) to ensure that residents of the fringe area who benefit from many of the facilities provided by city government bear their full share of these costs. *Id.* at 1-2. The central theme is that annexation can provide "a sound base for areawide action, orderly growth, and essential government services." *Id.* at 2. Some municipalities, however, attempt to annex land for less noble reasons, such as increasing tax revenues by incorporating commercially valuable property or thwarting anticipated annexations by another jurisdiction. *See, e.g.*, Superior Oil Co. v. City of Port Arthur, 628 S.W.2d 94 (Tex. Civ. App. 1981), *appeal dismissed*, 459 U.S. 802 (1982) (city attempted to annex three marine leagues extending into the Gulf of Mexico which encompassed a drilling platform, five oil, gas and mineral leases and various other production facilities). *See also infra* notes 64, 117 and accompanying text.

4. *See* Sandalow, *The Limits of Municipal Power Under Home Rule: A Role for the Courts*, 48 MINN. L. REV. 643, 694-99 (1964). *See also infra* notes 47-48 and accompanying text.

5. *See infra* notes 130-33 and accompanying text. *See also* Mandelker, *Municipal Incorporation and Annexation: Recent Legislative Trends*, 21 OHIO ST. L.J. 285, 298-99 (1960); Murphy, *Intergovernmental Dynamics of Annexation and De-Annexation: The* Richmond *Case*, 31 AD. L. REV. 385, 394 (1979); Sandalow, *supra* note 4, at 694 (noting three distinct interests directly affected by annexation: the municipality, the territory to be annexed and the larger area from which the municipality takes the territory).

6. The Missouri annexation process provides a good illustration of the procedures and problems faced by other states with developing metropolitan areas. In 1983, there existed 156 counties with populations greater than 250,000, including 48 counties with

law in Missouri.[7] Second, it discusses the deficiencies in Missouri's current annexation scheme and explores the potential impact of these deficiencies on annexations in St. Louis County.[8] Finally, this Note suggests alternatives to Missouri's present annexation process that will promote orderly growth and reduce conflicts between urban counties and municipalities seeking to annex unincorporated land.[9]

II. THE HISTORY AND DEVELOPMENT OF MISSOURI'S ANNEXATION SCHEME

A. *Statutory Framework: The Sawyer Act*

The Sawyer Act is the cornerstone of Missouri's annexation scheme.[10] Passage of the Act marked the legislature's first attempt to impose stricter annexation requirements on municipalities wishing to annex new territory.[11] Prior to the Sawyer Act, a city had almost un-

---

more than 500,000 persons and 20 counties with one million or more. In 44 counties, the core city and the county governments operate independently of each other. THE MUNICIPAL YEAR BOOK, *supra* note 1, at 13. Unlike other discussions of the annexation problem, this Note will not focus on annexations made by central cities, but concentrates on annexations in urban counties like St. Louis, that have a separate core city and county governments. For a discussion from a traditional annexation perspective, see Vestal, *Government Fragmentation in Urban Areas*, 43 U. COLO. L. REV. 155 (1971).

7. *See infra* notes 10-128 and accompanying text.

8. *See infra* notes 129-62 and accompanying text.

9. *See infra* notes 163-84 and accompanying text.

10. The Sawyer Act is the popular name used by courts to refer to § 71.015, enacted by the Missouri Legislature in 1953. Act of July 10, 1953, ch. 71, 1953 Mo. Laws 309 (codified as amended at MO. REV. STAT. § 71.015 (Supp. 1984)). The Act applies to annexations by all incorporated municipalities, but does not apply to those by towns and villages. Towns and villages annex territory by filing a petition with the county court and securing a judicial order approving the annexation. *See* MO. REV. STAT. § 80.030 (1978). A 1963 amendment to the Sawyer Act, however, applied the Act to towns and villages in first-class charter counties. *See infra* notes 67-71 and accompanying text. Constitutional charter cities are also exempt from the Act because section 71.015's requirements conflicted with time limits set forth in the Missouri Constitution. *See* MO. CONST. art. VI, §§ 19-20. *See* McConnel v. Kansas City, 282 S.W.2d 518 (Mo. 1965) (not improper for constitutional charter city to use Sawyer Act procedures).

11. Prior to the Sawyer Act's passage, loose annexation requirements often resulted in a scramble by unincorporated areas to incorporate so they could avoid annexation by adjacent cities. As a result, coordination, orderly planning and development were virtually impossible. *See* Note, *Annexation by Municipality of Adjacent Area in Missouri: Judicial Attitude Toward the Sawyer Act*, 1961 WASH. U. L.Q. 159. Excessive incorporations may lead to greater fragmentation or "balkanization" of local governments. St. Louis County is an excellent example of this phenomenon. In 1960, there were 99 in-

limited power to extend its boundaries. A city could annex new areas simply by adopting an ordinance defining its new boundaries and having a majority of city electors approve the ordinance in an election.[12] By filing a suit in equity, opponents of an annexation could challenge the city's action as an unreasonable exercise of its police power. These efforts were rarely successful, however, because the city ordinance carried a strong presumption of reasonableness.[13]

The Missouri legislature altered its deferential view towards municipal annexations when it passed the Sawyer Act. The Act tempered a municipality's ability to extend its boundaries by giving the judiciary power to review annexations.[14] Following the passage of an ordinance approving an annexation, the Act required the city to file an action in the circuit court having jurisdiction over the unincorporated area. The court had to issue a favorable declaratory judgment order before a municipality could implement the annexation. The Act required the city to define the boundaries of the territory encompassed by the proposed annexation, prove the annexation's reasonableness and necessity to the city's development and establish that it could deliver municipal serv-

---

corporated cities in the county; some cities incorporated as a defensive measure to avoid annexation by an adjoining city. *See* City of Olivette v. Graeler, 338 S.W.2d 827, 837 (Mo. 1960). The Missouri legislature attempted to remedy these problems by imposing stricter annexation requirements in the Sawyer Act. For a discussion of the Sawyer Act, see Salsich, *Local Government in Missouri: The Crossroads Reached*, 32 MO. L. REV. 73, 76-77 (1967).

12. *See* MO. REV. STAT. § 73.050 (1959) (first-class cities) (repealed 1975); MO. REV. STAT. § 75.020 (1959) (second-class cities) (repealed 1975). The process still applies to annexations in third- and fourth-class cities. *See* MO. REV. STAT. § 77.020 (1978) (third class cities); MO. REV. STAT. § 79.020 (1978) (fourth-class cities).

13. Johnson v. Parkville, 269 S.W.2d 775 (1954). After the city council passed an annexation ordinance, a suit in equity to enjoin enforcement or a suit by quo warranto were the only methods available to challenge an annexation's reasonableness. Note, *supra* note 11, at 160; Koslovsky, *Recent Developments of the Law of Annexation in Missouri*, 1984 J. MO. BAR 232, 232-33. The annexation opponent had a difficult burden of proof because the ordinance carried a strong presumption of reasonableness. The courts limited their role to determining whether "the exercise of legislative powers has been arbitrary and unreasonable." City of St. Joseph v. Hankinson, 312 S.W.2d 4, 8 (Mo. 1958). *See also* Ozier v. City of Sheldon, 218 S.W.2d 133 (Mo. Ct. App. 1949) (annexation solely for tax benefits is unreasonable).

14. The Missouri Municipal League notes that annexation in Missouri involves both the legislative and judicial processes. Through the legislative process, cities initiate and carry out the statutory procedure applicable to their particular municipality after determining the necessity of the annexation and the extent of the proposed boundaries. Courts then determine whether the annexation is reasonable and necessary. *See* MISSOURI MUNICIPAL LEAGUE, REPORT ON ANNEXATION LAW IN MISSOURI (June 1982).

ices to the new area within a reasonable amount of time.[15] Before it could grant the declaratory judgment, the court had to determine that the city's petition met these requirements.[16]

B. *The Sawyer Act's Constitutionality*

In *City of St. Joseph v. Hankinson*,[17] opponents of the new annexation scheme challenged the Sawyer Act on grounds that it unconstitutionally delegated the legislature's power to grant or restrict annexations to the judiciary.[18] The opponents of a proposed annexa-

15. The full text of the Sawyer Act provides as follows:

> Whenever the governing body of any city has adopted a resolution to annex any unincorporated area of land, such city shall, before proceeding as otherwise authorized by law or charter for annexation of unincorporated areas, file an action in the circuit court of the county in which such unincorporated area is situated, under the provisions of chapter 527, RSMo., praying for a declaratory judgment authorizing such annexation. The petition in such action shall state facts showing: (1) The area to be annexed; (2) That such annexation is reasonable and necessary to the proper development of said city; and (3) The ability of said city to furnish normal municipal services of said city to said unincorporated area within a reasonable time after said annexation is to become effective. Such action shall be a class action against the inhabitants of such unincorporated area under the provisions of section 507.070, RSMo.

MO. REV. STAT. § 71.015 (1978) (repealed 1980). The Missouri Legislature substantially restructured the Sawyer Act in 1980. *See infra* notes 89-97 and accompanying text.

16. The Sawyer Act's primary departure from the existing annexation scheme was the requirement that municipalities file a declaratory judgment action. Missouri courts previously had considered the "reasonableness" of an annexation by considering a number of factors focusing on the needs of the annexing municipality. *See* Note, *supra* note 11, at 162. For an example of the factors considered by Missouri courts prior to the Sawyer Act, see Major v. Kansas City, 233 Mo. 162, 213-14, 134 S.W. 1007, 1022 (1911) (en banc). *Major*, a quo warranto action challenging an amendment to the city charter concerning new territory, upheld an annexation after determining that the territory to be annexed: 1) was platted and offered for sale or use as city lots; 2) was held by the owner to be marketed as city property when its value reached the owner's asking price; 3) represented municipal growth beyond old legal boundaries; 4) was necessary to provide adequate municipal services; and 5) was valuable because of its proximity to the municipality. *Id.* The court indicated that municipalities may not annex territory when the land is primarily used for agricultural purposes or is vacant and will not derive special value from being adapted to urban use. *Id.* at 214, 134 S.W. at 1022.

17. 312 S.W.2d 4 (Mo. 1958).

18. The Missouri Constitution grants the legislature authority to annex territory with varying restrictions. *See* MO. REV. STAT. § 71.015 (1959) (provisions affecting all cities) (repealed 1970); MO. REV. STAT. §§ 73.030-.060 (1959) (provisions affecting first-class cities) (repealed 1975). Opponents of the annexation argued that the legislature "bargained away" strictly legislative authority under the constitution by authorizing the judiciary to determine the reasonableness and necessity of an annexation prior to

tion by the City of St. Joseph claimed that the Act failed to provide the courts with sufficient guidelines for reviewing annexation actions.[19] They argued that by allowing the judiciary to determine whether an annexation was reasonable and necessary,[20] the legislature invalidly gave the courts "broad power to determine the political and economic expediency" of an annexation, thus violating the separation of powers between the legislative and judicial branches.[21]

The Missouri Supreme Court rejected this constitutional attack[22] and in its opinion laid the groundwork for future annexation cases.[23] The court held that the Sawyer Act did not confer additional power to the judiciary but merely changed the procedures a city must follow before it could annex new territory.[24] The *Hankinson* court, however,

---

its approval. 312 S.W.2d at 7. The annexation opponents based their argument on the well settled rule that disallows delegation of strictly legislative powers to nonlegislative entities. *See* D. MANDELKER, *supra* note 1, at 41-52.

19. 312 S.W.2d at 7. The city argued that the vague and indefinite standards in the Sawyer Act did not provide an adequate determination of the inhabitants' and property owners' individual rights. *Id.* The city also argued that the statute did not expressly give the court authority to approve annexations. *Id.* The court noted, however, that the substantive question was whether the Sawyer Act improperly delegated legislative functions to the judiciary. *Id.* The court rejected this claim by asserting the principle that when the legislature "prescribes the conditions necessary for an annexation, it may delegate to the courts the power to determine whether those conditions exist; and such is a proper judicial function or one of a mixed legislative and judicial nature." *Id.* at 8.

20. *See supra* note 14.

21. 312 S.W.2d at 8. The annexation opponents relied on several out of state cases that held annexation statutes invalid for improperly delegating legislative power to the judiciary. *See, e.g.*, Klise v. Town of Riverdale, 244 Iowa 423, 57 N.W.2d 63 (1953) (court determination of whether annexation is "desirable" constitutes improper delegation of power). The Missouri Supreme Court found that those cases merely held that the legislature may not delegate to the judiciary the broad power to determine the political and economic expediency of an annexation, or provide the courts general discretion to determine whether the "public interest" requires an annexation. 312 S.W.2d at 8. For a more recent example of an annexation statute's improper delegation of power, see Town of Beloit v. City of Beloit, 37 Wis. 2d 637, 155 N.W.2d 633 (1968) (judicial determination of "public interest" in annexation statute improperly delegates constitutional authority). D. MANDELKER, *supra* note 1, at 50-52 (reviewing the scope of judicial review and the rule of reason in annexation cases).

22. 312 S.W.2d at 10.

23. *Hankinson* established the basic framework for judicial review in annexation cases under the Sawyer Act. *Hankinson* has been followed in many later annexation opinions. *See, e.g.*, Binger v. City of Independence, 588 S.W.2d 481, 483 (Mo. 1979); City of Des Peres v. Stapleton, 524 S.W.2d 203, 207 (Mo. Ct. App. 1975); City of Creve Coeur v. Huddleston, 405 S.W.2d 536, 539-40 (Mo. Ct. App. 1966).

24. 312 S.W.2d at 9-10. The *Hankinson* court held that the Sawyer Act simply codified the general powers exercised by the judiciary in annexation cases. *Id.* The

limited the judiciary's role to determining, "in advance of the consummated annexation,"[25] whether the ordinance approved by a city was so unreasonable and unnecessary as to be an arbitrary and oppressive exercise of the city's legislative power.[26] The court added that the Sawyer Act sufficiently prescribed the conditions municipalities must meet and the guidelines courts must follow in determining whether an annexation can proceed.[27] In testing the reasonableness and necessity of an annexation, the *Hankinson* court determined that legislative intent required courts to apply the principles and standards they had applied prior to the enactment of the Sawyer Act.[28] The court placed particular emphasis on the principle, followed in earlier annexation cases,[29] that a court confine its consideration of a proposed annexation to deter-

---

court found that the Act only imposed additional procedural restrictions upon the power to annex. *Id.* The annexation statute did not give the court any power or authority which they did not have already, but merely permitted courts to exercise their power in advance of the annexation. *Id.*

25. *Id. See supra* note 16 and accompanying text.

26. 312 S.W.2d at 9.

27. *Id.* at 10. The court reasoned that prior decisions had fixed the meaning of the terms used in the Sawyer Act and concluded that the statute clearly established the conditions upon which an annexation may proceed. Noting that the Act's reliance on annexation precedent gave meaning to its terms, the court stated:

> The court does not now, and never did, consummate an annexation. It merely declares the legislative action valid or invalid. If the court now finds that the required conditions have been met it merely authorizes the city to proceed with the annexation under the general laws applicable to it. . . . As interpreted and construed in the light of our established adjudications, we hold that § 71.015 is not unconstitutional . . . .

312 S.W.2d at 10. *See also infra* note 28.

28. 312 S.W.2d at 10. The court presumed that the legislature used the words "reasonable" and "necessary" in the Sawyer Act in light of, and as defined and construed in, the court's previous annexation cases. *Id.* at 8. For a list of principles that courts applied prior to the Sawyer Act to determine the reasonableness of an annexation, see *supra* note 16. *See also* Taylor *ex rel.* Kansas City v. North Kansas City, 360 Mo. 374, 378, 228 S.W.2d 762, 774 (1950) (en banc) (in addition to the principles established by the *Major* case, the court should consider whether the territory proposed to be annexed: 1) had city advantages; 2) would make the city limits regular; 3) would tend to secure uniform grade and street alignment; 4) is required by public convenience; and 5) is necessary to foster the growth and prosperity of the city); Dressel v. City of Crestwood, 257 S.W.2d 236 (Mo. Ct. App. 1953) (reasonableness shown where land annexed is adaptable to urban purposes and is necessary or convenient to the exercising of an annexing city's government); Note, *supra* note 11, at 162 (pre-Sawyer Act cases reflect a preoccupation with the needs of the annexing city).

29. *See supra* note 28. *See also* Mallett *ex rel.* Womack v. City of Joplin, 332 Mo. 1193, 62 S.W.2d 393 (1933) (whether annexation upheld by showing reasonableness is a fairly debatable question).

mining whether the evidence shows the reasonableness of the annexation is "fairly debatable."[30] If the evidence is sufficient to meet the "fairly debatable" standard, then the court must defer to the legislative discretion of the local governing board, and the municipality can annex the adjacent territory.[31]

The *Hankinson* court's interpretation of the Sawyer Act placed the burden of proving an annexation's reasonableness on the annexing city.[32] Considering what evidence would satisfy the burden of proof, the Missouri Supreme Court held it would review the particular facts of each annexation in light of the criteria considered in previous annexation decisions.[33] One key factor considered by the *Hankinson* court

30. 312 S.W.2d at 8, 20. The *Hankinson* court stated the universal rule that a court cannot:

> substitute its discretion or judgment as to the advisability or propriety of the annexation for that of the legislative body of the city . . . its consideration of "reasonableness" is confined to a determination of whether there exists a sufficient showing of reasonableness to make that question, at the least, a fairly debatable one; if there is such, then the discretion of the legislative body is conclusive.

Id. at 8. *City of Joplin* sheds further light on the "fairly debatable" standard. If the evidence demonstrates that the annexation is "fairly debatable," then the court will approve the expansion of city boundaries. *City of Joplin*, 332 Mo. at 1205, 62 S.W.2d at 398. As the Missouri Supreme Court stated in *City of Joplin*:

> If the question of whether or not the territory involved should be included within the city limits was fairly debatable, that is, if there was substantial evidence each way so that reasonable men would differ about its necessity, then the decision of that question was for the city council and the city electorate and not for the court.

Id.

31. 312 S.W.2d at 8. The "fairly debatable question" principle is an appropriate method to limit the judicial scope of review in annexation cases. The judiciary's role is to check the arbitrary and abusive exercise of legislative power, not frustrate the local governing body's proper legislative function.

32. 312 S.W.2d at 10. The Sawyer Act placed the burden of proceeding, and of filing a suit and praying for a declaratory judgment, upon the city. MO. REV. STAT. § 71.015 (1959) (repealed 1980). The *Hankinson* court found that the burden of proof requirement obligates the city to make a prima facie showing that it has not exercised its discretionary and legislative powers in an unreasonable or arbitrary fashion. 312 S.W.2d at 10. *Accord* City of St. Charles v. Schone, 569 S.W.2d 769, 774 (Mo. Ct. App. 1978); *cf.* City of St. Ann v. Buschard, 299 S.W.2d 546, 552 (Mo. Ct. App. 1957) (legislature intended the city to both allege and prove the allegations in its annexation petition).

33. 312 S.W.2d at 17. For a list of the factors considered by the Missouri Supreme Court in previous annexation cases, see the discussion of the *Major* case, *supra* note 16, and the discussion of the *Taylor* case, *supra* note 28. The court indicated that all factors favoring annexation need not be present in a given annexation proposal. Each annexation would be reviewed on the record presented by the city. The court's rationale stemmed from its concern that the judiciary should not interfere with the local gov-

was the steady movement of population from the City of St. Joseph to adjacent areas where land was available for residential development.[34] The gradual migration of population to neighboring territory created many social and business ties between residents in the city and those persons residing in the proposed annexation area.[35] The court also

erning body's legislative discretion in annexation decisions. Citing *City of Joplin*, the court stated:

> It is no province of the court to substitute its own judgment of what would be the best or most advisable line for the extended limits; it is not its province to subtract or add to the territory selected by the municipality to be annexed; its sole duty is to examine the extension as actually attempted and to say whether it should remain.

312 S.W.2d at 17-18. *See also supra* note 28. Subsequent Missouri courts have followed, although slightly modified, the case-by-case principle. *See, e.g.*, City of Cameron v. Stafford, 466 S.W.2d 115, 120 (Mo. Ct. App. 1971) (no factor standing alone controls or is sufficient to prove that the reasonableness of an annexation is fairly debatable, but each factor if relevant under the circumstances of the case, is to be considered in relation to the others). More recent annexation decisions generally consider evidence presented by a city seeking to annex adjacent territory in light of more comprehensive criteria than pre-Sawyer Act cases. Although not exclusive, a list of criteria is included in City of Perryville v. Brewer, 557 S.W.2d 457, 467 (Mo. Ct. App. 1977). The criteria include: 1) a need for residential or industrial sites within the proposed area; 2) the city's inability to meet its needs without expansion; 3) sole consideration of needs that are reasonably foreseeable and not visionary; 4) past growth that may relate to future necessity; 5) evaluating future needs by reviewing whether past growth caused the city to spill over into the proposed area; 6) the beneficial effect of uniform application and enforcement of municipal zoning ordinances in the city and in the annexed area; 7) the need for or the beneficial effect of uniform application and enforcement of municipal building, plumbing and electrical codes; 8) the need for or the beneficial effect of extending police protection to the annexed area; 9) the need for or the beneficial effect of uniform application and enforcement of municipal ordinances or regulations pertaining to health; 10) the need for and the ability of the city to extend essential municipal services into the annexed area; 11) enhancement in value by reason of adaptability of the land proposed to be annexed for prospective city uses; and 12) the regularity of boundaries. *Accord* City of Town and Country v. St. Louis County, 657 S.W.2d 598, 610 n.2 (Mo. 1983) (en banc). *See also* Koslovsky, *supra* note 13, at 233 (placing annexation factors into categories based upon whether they are susceptible to proof by objective fact, are subjective in nature, or involve both objective and subjective elements).

34. 312 S.W.2d at 18. A large part of St. Joseph's population had moved into densely settled suburban subdivisions. The court viewed these residential developments as part of the growth of the city. *Id.* The growth of suburban residential areas outside city boundaries is called the "spillover effect." *See, e.g.*, Hudson Community Ass'n v. City of Ferguson, 456 S.W.2d 581, 585 (Mo. Ct. App. 1970) (lack of vacant property in the city created spillover of population in annexed area); *cf.* City of Mexico v. Hodges, 482 S.W.2d 545, 551 (Mo. Ct. App. 1972) (absence of spillover of population from city to unincorporated area).

35. 312 S.W.2d at 20. The evidence showed 59% of household heads in the proposed annexation area were employed in the City of St. Joseph. In addition, 20 or more streets extended from the city to the area. *Id.* at 13. Subsequent annexation cases have

noted that St. Joseph had studied carefully the proposed annexation for several years.[36] The study demonstrated that the annexation would be important to the city's future "realistic" growth.[37] The court concluded that St. Joseph sustained its burden of proving that the reasonableness of its proposed annexation was at least a debatable question.[38]

C. *Judicial Application of the Sawyer Act in Missouri's Urban Counties*

1. The *Graeler I & II* Decisions

The *Hankinson* decision established the constitutionality of the Sawyer Act and articulated the general principles courts should use to review annexation proposals. The *Hankinson* court, however, left for future courts the task of determining the various factors to apply in evaluating the reasonableness of an annexation.[39] In *City of Olivette v. Graeler (Graeler I)*,[40] which involved an annexation proposal in St. Louis County,[41] the Missouri Supreme Court identified additional fac-

---

recognized the importance of community ties between the annexing city and the territory sought to be annexed. *See, e.g.*, Mayor of Liberty v. Beard, 613 S.W.2d 642, 655 (Mo. Ct. App. 1981) (annexation necessary to control an area that has community of interest with the city).

36. 312 S.W.2d at 20.

37. *Id.* The Court noted that "a city may, to a reasonable extent, look to its future needs in planning and making an annexation." *Id.* at 18. Evidence that growth has been slow in the past should not defeat the reasonableness of an annexation so long as its present prospects have a realistic basis. *Id.* at 20. Later courts have adopted the *Hankinson* approach by evaluating whether the potential growth of an annexing city is "reasonably foreseeable." *See, e.g.*, City of O'Fallon v. Bethman, 569 S.W.2d 295, 301 (Mo. Ct. App. 1978) (annexed land needed to accommodate natural expansion and growth within the reasonably foreseeable future); *cf.* City of Cameron v. Stafford, 466 S.W.2d 115, 122 (Mo. Ct. App. 1971) (city's hope for future growth not likely in the foreseeable future).

38. 312 S.W.2d at 20.

39. *See, e.g.*, Binger v. City of Independence, 588 S.W.2d 481, 486-87 (Mo. 1979) (necessity of annexation based on expected growth in population and substantial industrial and commercial development); City of Perryville v. Brewer, 557 S.W.2d 457, 462 (Mo. Ct. App. 1977); City of Des Peres v. Stapleton, 524 S.W.2d 203, 209 (Mo. Ct. App. 1975) (annexation necessary to meet growth needs; minimal amount of vacant land available within city); City of Mexico v. Hodges, 482 S.W.2d 545, 549-50 (Mo. Ct. App. 1972) (annexation denied; boundaries of proposed area irregular; part of annexed land unsuitable for development); City of Creve Coeur v. Brame, 446 S.W.2d 173, 176 (Mo. Ct. App. 1969) (annexation necessary for residential development; history of continuous growth; annexed area will receive better services).

40. 338 S.W.2d 827 (Mo. 1960).

41. In *Graeler I*, the City of Olivette in St. Louis County filed a declaratory judg-

tors for courts to consider before approving annexations in urban areas.

Initially, the *Graeler* court reaffirmed its position in *Hankinson* that factors developed by pre-Sawyer Act cases should continue to guide courts in evaluating the reasonableness of a particular annexation proposal.[42] In addition, however, the *Graeler I* court emphasized that the judiciary must consider new laws and modern economic and social trends in evaluating annexation proposals.[43] Noting St. Louis County's unique status as a home rule charter county under the Missouri Constitution[44] and finding a growing tendency by the legislature to delegate urban counties greater authority to perform municipal services,[45] the court held that it must weigh St. Louis County's interest as a community against claims made by an annexing city in determining the reasonableness of an annexation.[46]

---

ment action under § 71.015 of the Sawyer Act in furtherance of its proposal to annex an adjoining area. 338 S.W.2d at 830. The original defendants, inhabitants and landowners in the area to be annexed, were sued as representatives of a class opposed to the annexation. *Id.* The trial court initially approved the proposed annexation but later sustained the defendants' motion for a new trial and entered judgment dismissing the city's petition. *Id.* The trial court concluded that § 71.015 did not apply to the area sought to be annexed because it received municipal-type services from St. Louis County and was, therefore, not an "unincorporated area" within the meaning of the statute. *Id.* The court of appeals transferred the case to the Missouri Supreme Court because it involved an interpretation of Art. VI, § 18 of the Missouri Constitution, which confers home rule powers to first-class charter counties. *Id.* The defendants argued that St. Louis County is a body corporate and politic with all the powers and authority of a municipal corporation in relation to areas outside the boundaries of incorporated municipalities in the County. *Id.* at 834. Moreover, the defendants claimed that the Sawyer Act did not apply because the area in question was within the "municipal sphere" of the county, and therefore, not an unincorporated area available for annexation. The court rejected this argument and held that any territory outside the boundaries of incorporated cities is an unincorporated area within the meaning of the Sawyer Act. *Id.* at 836. Despite its corporate arm of organization and its municipal-type functions, St. Louis County was not an incorporated city as defined in the annexation statutes. *Id.* at 835.

42. *See* 338 S.W.2d at 837. *See also supra* notes 27-31 and accompanying text.

43. 338 S.W.2d at 837.

44. St. Louis County adopted its home rule charter pursuant to Article VI, § 18(a) of the Missouri Constitution in 1950. The County had unique status until 1973, when Jackson County also adopted a home rule charter. *See* MO. CONST. art. VI, § 18(a).

45. 338 S.W.2d at 838. "The legislative trend has been to vest counties with greater authority to perform services of a local or municipal nature. This permissive legislation and the extent to which it is used must be taken into consideration in determining whether the annexation is authorized." *Id.*

46. *Id.* "The interest of the county as a community must be weighed against the claims of the city because the county's municipal powers are also provided by law and are a part of the public policy of the state." *Id.* For later cases citing *Graeler I* for this

The *Graeler I* court also determined that annexations in St. Louis County affect the entire metropolitan community, not just the annexing city and residents of the unincorporated territory.[47] The Missouri Supreme Court did not specifically explain how it reached this conclusion. The court found, however, that annexations had increased competition among cities for unincorporated areas and led to further decentralization within the county, thus affecting the St. Louis metropolitan area.[48] Finding it appropriate for a court to consider the "proper development" of a city[49] when evaluating an annexation proposal, the *Graeler I* court stated that it was also appropriate to consider the interests of the St. Louis County community.[50] The court reasoned that the legislature intended that the interests of both the annexing city and residents of the proposed annexation territory be considered before courts approve an annexation under the Sawyer Act.[51] Because St. Louis County had been delivering municipal services to unincorpo-

---

proposition, see St. Louis County v. Village of Champ, 438 S.W.2d 205, 212 (Mo. 1969) (en banc); City of Olivette v. Graeler, 369 S.W.2d 85, 94 (Mo. 1963) (*Graeler II*); City of St. Peter v. Kodner Development Corp., 525 S.W.2d 97, 100 (Mo. Ct. App. 1975); City of Des Peres v. Stapleton, 524 S.W.2d 203, 209 (Mo. Ct. App. 1975); City of Creve Coeur v. Huddleston, 405 S.W.2d 536, 540 (Mo. Ct. App. 1966).

47. 338 S.W.2d at 838.

48. *Id.* at 837-38. The *Graeler I* court noted that some unincorporated areas incorporate only to avoid annexation by an adjoining city. Frequently referred to as "defensive incorporations," these incorporations have increased decentralization and affected industry and development of St. Louis County. While the court's explanation of the link between competition for unincorporated territory and its effect on the metropolitan community is weak, perhaps the court considered that annexations in a highly developed urban county affect the orderly growth and development of an entire region, not simply the development of an annexing city and the unincorporated territory. NATIONAL LEAGUE, *supra* note 1, at 1-2 (annexations are sound base for area-wide action and orderly growth).

49. 338 S.W.2d at 838. The court considered the proper development of a city as one of the "elements of the issues of necessity and reasonableness." *Id.* The defendants in *Graeler I* argued that the municipality must show that an annexation is reasonable to all interested parties. The city asserted that the test of reasonableness goes only to "the proper development of the annexing city." *Id.* at 836. The city's contention appeared justified on the basis of prior annexation decisions. *See* Note, *supra* note 11, at 162.

50. *See supra* note 46 and accompanying text.

51. *See* 338 S.W.2d at 837. The precise language of the Sawyer Act states that an annexation must be "reasonable and necessary to the proper development of said city." *Id.* at 836. The *Graeler I* court found that the provision by itself "is confusing" but the intent of the legislature was to apply the reasonableness test to both the annexing city and the residents in the annexed territory. *Id.* at 837. The court stated:

> The reasonableness of an annexation by a city has always been held to be a subject of judicial inquiry largely because the inhabitants of the adjacent territory have no

rated areas targeted for annexation,[52] the *Graeler I* court concluded that the lower courts reviewing annexations should consider the services provided by the county to the territory encompassed by the proposed annexation and determine whether these services should be replaced by those of the annexing city.[53] The Missouri Supreme Court remanded the case to the lower court for review of the annexation proposal under the standards stressed in *Graeler I*.[54]

While *Graeler I* established the general standards that the Sawyer Act required a court to apply to annexations in urban counties,[55] the court did not identify the interests of the county as a community. *Graeler I* also left unanswered how a court should weigh the county's interests against the interests of a city seeking to annex adjacent territory. The court had an opportunity to resolve these issues in *City of Olivette v. Graeler (Graeler II)*.[56]

Following remand of *Graeler I*, the lower court found the Olivette annexation necessary to the proper development of the city, reasonable to the inhabitants and owners in the city and the annexation area, and in the best interests of St. Louis County as a community.[57] The Mis-

---

part in the selection of the city officers who initiate the annexation proceeding nor a vote in the city election by which it is confirmed.

Id. at 836. Because the legislature did not contemplate abandonment of the judicial review function when it enacted the Sawyer Act, the *Graeler I* court inferred that it was appropriate to consider the interests of the proposed annexation territory when assessing the reasonableness of an annexation. *Id.*

52. MO. CONST. art. VI, § 18(a) authorizes a home rule charter for counties with more than 85,000 residents. Article VI, § 18(c) authorizes home rule charter counties to exercise legislative power pertaining to public health, police, traffic safety, building construction, and planning and zoning in the part of the county outside incorporated cities. *Id.*

53. 338 S.W.2d at 838. Included among the services St. Louis County provided to the unincorporated area that the City of Olivette wanted to annex were: zoning and planning, traffic safety, police protection, health and sanitation services, a county hospital, and road building and maintenance. *Id.*

54. *Id.* On remand, St. Louis County and the County Supervisor intervened to oppose the annexation. General Electric Company and Monsanto Chemical Company also were granted leave to intervene because they owned industrial property in the unincorporated area and opposed the annexation. Other corporations owning industrial property in the area sought to be annexed by Olivette also joined the suit. *Id.*

55. *See supra* note 46-51 and accompanying text. *See also* Lauer, *Municipal Law in Missouri*, 28 MO. L. REV. 555, 581 (1963) (reviewing the effects of the *Graeler I* decision).

56. City of Olivette v. Graeler, 369 S.W.2d 85 (Mo. 1963).

57. *Id.* at 92-93. The trial court's opinion is unreported, but the Missouri Supreme Court discussed the lower court's decision in its *Graeler II* opinion. In *Graeler II*, the

souri Supreme Court reversed, holding that the interests of the county outweighed the city's need for the area. The court also found that the proposed annexation would not be reasonable to the residents and property owners in the territory sought to be annexed.[58]

The *Graeler II* court distinguished the standards that courts should apply to annexations in highly developed and substantially urban areas, such as St. Louis County, from the standards that should apply to annexations in the less populated and less developed parts of the state.[59] Substantial industry had settled in the unincorporated areas of St. Louis County.[60] The county had developed an effective organization that provided residents in unincorporated areas all the normal services and advantages that any municipality within the county could deliver.[61] The *Graeler II* court also recognized that further development of St. Louis County's unincorporated areas would help maintain the tax base necessary for the county to furnish vital local services.[62] Consequently, the supreme court held that courts must consider the

---

Missouri Supreme Court noted that the lower court's findings "were most general." *Id.* at 93. In addition to the findings noted in the text, the trial court also found that the City of Olivette had the ability to furnish normal municipal services within a reasonable time. *Id.* The *Graeler II* court also reiterated the relevant rules established by *Graeler I* and stated it would consider these rules along with the usual guides laid down in annexation cases. *Id.* at 93-94.

58. *Id.* at 94.

59. *Id.* The *Graeler II* court noted that some of the older rules applied to annexations in less developed parts of the state are inapplicable to annexations in urban St. Louis County. Because unincorporated sections of urban counties can be as completely developed under a county government as under a municipal government, the court determined "that in this highly developed and substantially urbanized community we have a situation materially different from those which exist in annexation proceedings elsewhere." *Id.* at 95.

60. *Id.* The court recognized that St. Louis County's population had vastly increased and that a significant number of corporations found it desirable to develop their operations in locations outside of the municipalities. *Id.* at 94-95. The court noted that some of these developed, yet unincorporated areas were annexed quickly by neighboring municipalities in disregard of the County's interests and the interests of some of the property owners in the annexed areas. *Id.* at 95. The *Graeler II* court emphasized the observation made in *Graeler I*, that there was a great deal of competition among cities for unincorporated territory and concluded that "the race for annexations has become somewhat unseemly." At the time *Graeler II* was decided, there were 29 annexation suits pending in St. Louis County. *Id.*

61. *Id.*

62. *Id.* The supreme court determined that the trial court record suggested the need for St. Louis County to maintain an adequate tax base by retaining and developing industry in unincorporated areas. *See id.*

county's general interest in the unincorporated area and the effects of the proposed annexation not only in connection with services rendered, but also with regard to the county's loss of control of the annexed territory.[63]

Turning to the facts of the case, the court viewed Olivette's annexation as an attempt to acquire more tax revenues without providing additional benefits to residents and property owners whom the county already served adequately.[64] The territory Olivette sought was highly developed and constituted an important part of the county's plans for future growth and development.[65] Finding no substantial evidence to support the annexation's reasonableness, the court held that the city failed to prove the elements required by the Sawyer Act.[66]

2. Broadening the Scope of the Sawyer Act

a. *Statutory Changes*

After the *Graeler II* decision, the Missouri legislature changed the annexation scheme for St. Louis County.[67] First, the legislature broadened the scope of the Sawyer Act. Instead of limiting the Act to incorporated municipalities, the legislature extended it to all cities, towns,

63. *See id.* at 94. After reviewing *Graeler II* one commentator speculated that *Graeler II*, while not inhibiting future annexations entirely, placed a very heavy burden on municipalities to establish "not merely that the particular annexation is reasonable and necessary with respect to the municipality and the area to be annexed, but also that it is consistent with the interests of St. Louis County as a whole." *See* Lauer, *supra* note 55, at 582.

64. 369 S.W.2d at 94. Underscoring the battle for control of unincorporated territory is the right to collect tax revenues from residential, commercial and industrial property owners. The *Graeler II* court recognized the tax consequences implicit in annexation disputes and supported the county's need to maintain an adequate tax base. The court held that "so long as the County has an effective county organization, it should not be whittled away to a mere shell by annexations which have as their prime purpose the acquisition of more city taxes." *Id.* at 95.

65. *Id.*

66. *Id.* After reviewing the trial court record and assessing the evidence bearing on the proposed annexation, the *Graeler II* court concluded that the city could not establish the overall reasonableness and necessity of the annexations in light of the court's recent constructions of the Sawyer Act (*Graeler I*). *Id.* In sum, the court found that "the annexation would simply impose city taxes upon the residents and property owners of the unincorporated area, without added benefits." *Id.* at 94.

67. *See* Act of July 19, 1963, ch. 71, 1963 Mo. Laws 126 (codified as amended at MO. REV. STAT. §§ 71.870-.880, 71.920 (Supp. 1984)). *See also* MISSOURI MUNICIPAL LEAGUE, *supra* note 14, at 3 (describing Sawyer Act amendments of 1963).

and villages located in first class charter counties.[68] More significantly, the amendments altered the election requirements applicable to annexations in first class charter counties. Under the new election provisions, both the city or town attempting the annexation and the target unincorporated area must hold an election.[69] The two elections must be held simultaneously.[70] Furthermore, separate majorities of the voters in each area must approve the annexation before the annexing municipality can file a declaratory judgment action seeking court

68. *See* MO. REV. STAT. § 71.860 (1978). Prior to the 1963 amendments, the Sawyer Act's annexation procedures applied only to first-class cities (communities with more than 65,000 inhabitants), second-class cities (communities with more than 27,500 inhabitants and less than 100,000 inhabitants), third-class cities (communities with 3,000 and less than 30,000 inhabitants), and fourth-class cities (communities with 500 inhabitants and less than 3,000 inhabitants). MO. REV. STAT. §§ 72.010-.040 (1959) (§§ 72.010-.020 repealed in 1975).

The Sawyer Act previously did not apply to towns, villages and constitutional charter cities. The legislature's 1963 amendments extended the Sawyer Act's requirement to towns, villages and constitutional charter cities in first-class charter counties. In 1963 the amendment pertained only to St. Louis County. *See supra* note 6; St. Louis County v. Village of Champ, 438 S.W.2d 205, 213 (Mo. 1969) (en banc) (reviewing the effect of the 1963 amendments on villages in St. Louis County).

69. *See* MO. REV. STAT. § 71.870 (1978). The mandatory election provision injected a new twist into the annexation process in first-class counties. Previously, an election was not required among the voters in either the annexing municipality or in the unincorporated area the municipality was seeking to annex. The legislative body of the annexing municipality that was within the scope of the Sawyer Act simply had to adopt a resolution to annex the adjacent area and file a declaratory judgment action seeking court approval. The 1963 amendments, however, required separate elections in both the annexing municipality and the unincorporated area. The mandatory election procedure applied only to first-class charter counties such as St. Louis County and, later, Jackson County which includes Kansas City. The election provision states that:

> The legislative body of any city, town or village located within the boundaries of a first class chartered county shall not have the power to extend the limits of such city, town or village by annexation of unincorporated territory adjacent to the city, town or village in accordance with the provisions of law relating to annexation by such municipalities until [an election is held] at which the proposition for annexation is carried by a majority of the total votes cast in th city, town or village and by a separate majority of the total votes cast in the unincorporated territory sought to be annexed. There shall be separate elections submitting the proposition of annexation to the two groups of voters, the same to be held simultaneously.

Id.

In 1980, the legislature amended the Sawyer Act to provide for simultaneous elections where annexations are proposed in nonfirst-class charter counties and written objection is filed with the governing body of the annexing municipality. *See* MO. REV. STAT. §§ 71.012, 71.015 (Supp. 1984).

70. *See* MO. REV. STAT. § 71.870 (1978).

approval.[71]

b. *The* Champ *Decision*

In *St. Louis County v. Village of Champ*,[72] the Missouri Supreme Court revealed the effects that the legislation's new requirements would have on future annexations. The Village of Champ[73] sought additional land to attract industrial plants to the area.[74] Champ proposed two annexations[75] and both received unanimous votes in the village and in

71. *Id.* The 1963 amendments also included a provision that ostensibly exempted annexing municipalities from the Sawyer Act's declaratory judgment provisions in limited situations. If both the annexing municipality and the unincorporated area were to vote unanimously in favor of annexation, the municipal limits could be extended by ordinance, thus seemingly bypassing the Sawyer Act's court approval procedure. *See* MO. REV. STAT. § 71.920 (1978). *But see infra* notes 72-86 and accompanying text for a discussion of St. Louis County v. Village of Champ, 438 S.W.2d 205 (Mo. 1969) (en banc) (new election procedures did not affect judicial inquiry into an annexation's reasonableness).

72. 438 S.W.2d 205 (Mo. 1969) (en banc).

73. The Village of Champ had a population of 25 people and comprised about one-half square mile. *Id.* at 208. Champ had no street department, fire department or police department. *Id.* The record showed that no residential, commercial or industrial development was taking place within its boundaries with the exception of one four-acre tract. *Id.* at 214. The village, having no present facilities of its own, was unable to demonstrate that it could provide any sort of municipal services to the area targeted for annexation. *Id.*

74. *Id.* at 209. Evidence introduced at trial showed that Champ wanted to annex additional land to develop industry in the area by means of revenue-bond financing and lease-backs. The village planned to use the revenue bonds to build industrial plants and lease them back to private concerns. *Id.* The village also intended to use revenue bond funds to purchase the R.C. Can Co., which owned a plant on the tract proposed for annexation, and lease the plant back to the company. *Id.* The revenue bond and lease-back scheme would promote industrial development by reducing the overall costs of financing and constructing new facilities. Although the company would have to make payments to the municipality under the lease agreement, thus providing a return for bond holders, the company's payments under the lease are significantly less than the cost of borrowing funds to construct and operate a facility.

The *Champ* court observed that, through these financing methods, a "municipality virtually . . . lifts itself by its own bootstraps to a position where it can attract industry." *Id.* at 213.

75. *Id.* at 206-07. Champ proposed its first annexation in 1965, which St. Louis County attacked in the trial court. *Id.* at 206. While the action was pending, Champ proceeded with a second, larger annexation in 1967, encompassing about three-and-one-half times the size of the original village. *Id.* at 207. St. Louis County also challenged the second annexation and the trial court consolidated for trial the two actions challenging Champ's annexations. *Id.* at 206.

the territory encompassed by the proposed annexation.[76] St. Louis County attacked Champ's action by filing for a declaratory judgment invalidating the annexations.[77] The trial court entered judgment for the village without findings of fact or conclusions of law.[78] Claiming that the trial court failed to apply properly the Sawyer Act's standards for annexation in first class charter counties, St. Louis County appealed to the Missouri Supreme Court.[79]

The supreme court speculated that the trial court may have approved Champ's annexations on the theory that the legislature's new election requirements made judicial review unnecessary.[80] Finding that the new dual election procedures did not preclude judicial inquiry into the reasonableness of an annexation, the court determined it could review Champ's annexation.[81] Citing *Graeler I* and *II*, the court also

76. *Id.* at 207. Only two families comprised of ten people lived in the annexed land. *Id.* at 209. In the 1965 election, the vote was 10-0 in Champ and 5 to 0 in the annexed area. In the 1967 election, the vote was 12 to 0 in Champ and 5 to 0 in the area proposed for annexation. *Id.* at 207 n.3.

77. *See id.* at 207.

78. *Id.*

79. *Id.*

80. *Id.* at 207. Because the trial court in *Champ* did not make any findings of fact or conclusions of law, the supreme court speculated over the lower court's reasons for upholding the *Champ* annexation. In *Champ I*, the Village of Champ argued that, under the Sawyer Act, annexations by villages need not be subject to judicial review. *See* State v. Champ, 393 S.W.2d 516, 532 (Mo. 1965) (en banc). The *Champ I* court found, however, that towns and villages, like cities, are subject to judicial review of an annexation's reasonableness. *See id.* The court reasoned that "the net result of respondents' [Village of Champ] contention would be a holding that the Legislature intended that towns or villages could make practically unlimited annexations." *Id.* Following *Champ I*, the village held annexation elections pursuant to the legislature's 1963 amendments, which provided that a village or town in a first-class charter county must comply with the Sawyer Act before extending its boundaries *unless* the vote in the annexation elections is unanimous in both the village and the annexed area. In the event of a unanimous vote, a village did not have to file a declaratory judgment action, thus negating judicial review of an annexation's reasonableness. *See supra* note 71; City of Kirkwood v. Allen, 399 S.W.2d 30, 34 (Mo. 1966). Because the village had complied with these procedures, it claimed that St. Louis County did not have standing to maintain a declaratory judgment action challenging the validity of Champ's annexations. *See* 438 S.W.2d at 211. The supreme court in *Champ II* surmised that the trial court entered judgment for the village because the village had complied with the annexation statute, thus negating judicial review and the county's standing to bring a declaratory judgment action. *See id.* at 213.

81. *Id.* at 211. Citing *Champ I*, the *Champ II* court noted that the reasonableness of a city's annexation is always the subject of judicial review, notwithstanding the unanimous vote election provision. *Id.* at 211, 213. *See supra* note 71 for further explanation of MO. REV. STAT. § 71.920 (1978). The *Champ II* court explained that:

found that the county had protected interests at stake and, therefore, had standing to maintain its action against the village.[82] The *Champ* court paid particular attention to the increasing number of conflicts of interest between St. Louis County and its municipalities since the *Graeler* cases,[83] and reiterated the necessity of judicial consideration of the county's interests as a community.[84] Because Champ's sole purpose was to promote industrial development,[85] the court held that St. Louis County's interests outweighed the claims of the village and thus granted the declaratory judgment.[86]

Otherwise, any village in St. Louis County, small enough to be sure of a unanimous vote, could succeed in annexing whatever amount of the adjacent unincorporated area of the county it could find where it was sure the one resident therein would vote in favor of annexation and by drawing the boundaries of the area so there would be no other voters included.

438 S.W.2d at 211.

82. *Id.* at 213. The *Champ II* court noted in strong terms that St. Louis County had standing to maintain its declaratory judgment action. "We are convinced that St. Louis County as a real party in interest here, has a legally protectible interest at stake." *Id.*

83. *Id.* at 212. The court attributed the heightened conflicts between St. Louis County and its 96 separate municipalities to constitutional enactments and statutes permitting cities to finance the construction of plants for manufacturing and industrial development by revenue bonds and leasebacks. *Id.* These financing schemes had provided greater incentives for annexations of vacant territory adjacent to municipal borders. *Id.* at 213. *See supra* note 74.

84. *Id.* at 212.

85. *Id.* at 214. Champ argued that its plan to develop the annexed areas through the use of municipal revenue bond financing and leaseback techniques did not make its annexations unreasonable as a matter of law. *Id.* at 213. St. Louis County claimed that Champ's plans were motivated by illegal purposes. *Id.* Following *Champ I*, the *Champ II* court specifically refused to adopt a per se rule of unreasonableness for annexations intended to further industrial development; the court equated the legislature's support for revenue bond financing and leaseback techniques with a strong public policy favoring "ambitious industrial development by municipalities." *Id.* The *Champ II* court held that "the correct view is that if annexation is otherwise reasonable, the fact that it also provides a method of financing does not make it objectionable, but it cannot constitute the sole justification." *Id.* at 214.

86. *Id.* The court applied the *Graeler I* and *II* balancing test to determine the reasonableness of Champ's annexations. Alluding to Champ's "community of interest" in the areas designated for annexation, the court observed that the "only real tie between Champ and the areas sought to be annexed is that annexation is a method of getting the [new industrial] plants built." *Id.* While indicating that the revenue bond financing scheme gave an annexing municipality greater weight in determining whether a proposed annexation would foster growth and prosperity, the court held that Champ's annexation had no reasonable basis because the city's sole motivation was to use the annexation as a means of financing for industrial development. Accordingly, the court concluded that the "interest of St. Louis County as a community in the areas sought to be annexed outweighs the claims of the village. . . ." *Id.*

c. *Further Legislative Fine-Tuning*

Following *Champ*, courts continued to apply the principles established in *Graeler I* and *II* to annexations in St. Louis County.[87] Missouri's annexation scheme remained largely unchanged[88] until 1980, when the legislature substantially restructured the Sawyer Act.[89] Although the 1980 amendment affecting annexations did not apply to municipalities in first class charter counties[90] like St. Louis and Jackson, it prescribed more detailed annexation procedures for municipalities located in other parts of the state. The 1980 amendments tightened up the Sawyer Act's annexation procedures, thus making it more difficult for municipalities to take over additional land.[91] Under the amended Act, a municipality seeking to annex unincorporated areas must satisfy five requirements. First, the annexing municipality must prepare a comprehensive "plan of intent" that specifies the major services presently provided by the city; a timetable for delivery of the city's services to the area proposed for annexation; the city's system for assessing property; the property tax rate; the zoning proposals for the annexed area; and the effective date of the proposed annexation.[92] Second, the 1980 amendment requires the municipality to propose an ordi-

87. *See, e.g.*, City of Des Peres v. Stapleton, 524 S.W.2d 203 (Mo. Ct. App. 1975) (*Graeler* distinguished; annexation's reasonableness upheld as fairly debatable); St. Louis County v. Village of Peerless Park, 494 S.W.2d 673 (Mo. Ct. App. 1973) (annexation upheld because county did not carry burden of showing unreasonableness); Hudson Community Ass'n v. City of Ferguson, 456 S.W.2d 581 (Mo. Ct. App. 1970) (annexation upheld; county was aggrieved but benefited by annexation).

88. The legislature made minor changes to the annexation scheme in 1973 and 1976. In 1973 House Bill 200 authorized cities in Franklin, St. Charles and Jefferson Counties to annex territory by using landowner petitions. Act of June 27, 1973, ch. 71, 1973 Mo. Laws 161. In 1976 House Bill 1362 extended this procedure to municipalities in all other counties. Act of June 23, 1976, ch. 71, 1976 Mo. Laws 617.

89. *See* Act of May 13, 1980, ch. 71, 1980 Mo. Laws 253 (codified at MO. REV. STAT. §§ 71.012, 71.015, 71.879, 71.880 (Supp. 1984)).

90. *See* MO. REV. STAT. § 71.015 (Supp. 1984). Section 71.015 expressly excluded municipalities in first-class charter counties from the new annexation requirements. The introductory language of the section stated that the act applied only to: "[A]ny city, town, or village, *not located in any first-class county*, which has adopted a constitutional charter for its own local government, seek[ing] to annex an area to which objection is made . . ." *Id.* (emphasis added). In construing this provision, the Missouri Attorney General ruled that municipalities in the first-class charter counties of St. Louis and Jackson must continue to follow the annexation procedures in the original version of § 71.015. 45 Op. Mo. Att'y Gen. 113 (1981).

91. *See* MISSOURI MUNICIPAL LEAGUE, *supra* note 14, at 4.

92. MO. REV. STAT. § 71.015(4)(a)-(e) (Supp. 1984).

nance confirming that it has fulfilled or will fulfill the annexation statute's requirements.[93] Third, the municipality must conduct a public hearing on the proposed ordinance.[94] Fourth, the municipality must approve the ordinance.[95] Fifth, the municipality must file an action for a declaratory judgment authorizing the annexation.[96] If the court approves the annexation, the Act requires separate elections in the city and in the unincorporated territory targeted for annexation.[97] In effect, these provisions compel the annexing city to devise comprehensive development plans so as to protect the rights and interests of residents in unincorporated areas.

3. The Current Annexation Scheme: The *Town and Country* Decision and its Aftermath

In *City of Town and Country v. St. Louis County*,[98] the Missouri Supreme Court had its first opportunity since *Champ* to apply the statutory standards for annexations in St. Louis County. *Town and Coun-*

93. *Id.* § 71.015(2).

94. *Id.* § 71.015(3).

95. *See id.* § 71.015(5). Approval of the proposed annexation ordinance is a condition precedent to the filing of an action praying for a declaratory judgment authorizing the annexation. *See id.*

96. *Id.* The petition seeking a declaratory judgment under the 1980 amendments to the Sawyer Act includes substantially the same requirements as a petition under the original act. Furthermore, the 1980 amendments did not affect the burden on the annexing municipality to show that its annexation is "reasonable and necessary to the proper development of the city, town, or village. . . ." *Id.* § 71.015(5)(b).

97. *Id.* § 71.015(6). The Missouri legislature seemingly adopted for all annexations the dual election procedures already applicable to annexations in first-class charter counties under § 71.870. *See* MO. REV. STAT. § 71.870 (Supp. 1984). *See also supra* notes 67-70 and accompanying text for an explanation of the election requirements for annexation in first-class charter counties. Under amended § 71.015(6), once the court authorizes a municipality to make an annexation, the annexing city and residents of the targeted area must hold separate elections. MO. REV. STAT. § 71.015(6) (Supp. 1984). Separate majorities of the total votes cast in each election are required before the annexation can proceed. *Id.* If separate majorities are not obtained, however, the annexing city may hold another election. If *less* than a majority of the votes cast in the unincorporated area are in favor of the proposal, but a majority of the votes cast in the annexing city approve the annexation, then dual elections must again be held within 120 days. *See id.* In the second set of elections, however, the city may annex the territory only if two-thirds of the total votes in both elections approve the annexation. *Id.* If the annexation proposal fails to obtain the requisite vote in this second election, then a two-year moratorium prevents annexation of any part of the unincorporated area targeted for annexation. *Id.*

98. 657 S.W.2d 598 (Mo. 1983) (en banc).

try overruled the long-standing principles established in *Graeler I* and *II*[99] and held that courts no longer had to consider the interests of St. Louis County as a community in determining the reasonableness of an annexation.[100] The trial court had approved Town and County's proposed annexations after concluding that one could fairly debate their reasonableness and necessity.[101] The Missouri Court of Appeals reversed, relying on the *Graeler* cases. The appeals court found no acceptable justification for authorizing the annexations and concluded that the annexations would be detrimental to the county as a community.[102] The Missouri Supreme Court assumed jurisdiction of the case from the court of appeals to determine the validity of the *Graeler* decisions in light of the 1980 amendments to Missouri's annexation scheme.[103]

On appeal to the supreme court, the county argued that the *Graeler* principles should remain intact.[104] Claiming that no material changes

99. *See supra* notes 39-66 and accompanying text (discussing the *Graeler I* and *II* decisions).

100. 657 S.W.2d at 605-06.

101. *Id.* at 600. Because the city of Town and Country is a fourth-class city organized and existing within first-class charter St. Louis County, the Sawyer Act required the city to follow the special election provisions applicable to annexations in first-class charter counties. Pursuant to those requirements, the city adopted resolutions in 1977, declaring its intention to annex three adjacent parcels of unincorporated territory. *Id.* at 601. Town and Country then held dual elections on the annexation question, which yielded majorities in both the annexing city and the unincorporated area. *Id.* Following these elections, the city filed a declaratory judgment action and the trial court entered a judgment approving the annexations. *Id.* at 600.

102. City of Town and Country v. St. Louis County, No. 42324, slip. op. (Mo. Ct. App. 1982), *rev'd*, 657 S.W.2d 598 (Mo. 1983) (en banc). In invalidating Town and Country's annexation, the court of appeals concluded:

> An examination of the proposed annexations leads inexorably to one conclusion. Whether each parcel is considered separately or together, the reasonableness of these annexations is not fairly debatable. . . . We do not discern, on the record, any justifiable reason for our approving the three proposed annexations. The County, on the other hand, demonstrated that the annexations would be detrimental to the County as a community. For these reasons, the judgment of the trial court is reversed.

Id. at 9-10.

103. 657 S.W.2d at 600. *See also supra* notes 39-66 and accompanying text (discussing the *Graeler I* and *II* decisions); notes 67-71, 87-97 and accompanying text (discussing the legislative changes in Missouri's annexation scheme).

104. *See* Supplemental Brief for Appellee St. Louis County at 7-8, City of Town and Country v. St. Louis County, 657 S.W.2d 598 (Mo. 1983) (en banc) [hereinafter cited as Brief, St. Louis County]. St. Louis County's brief pointed out that *Graeler I*, *Graeler II* and *Champ* "constitute the fabric of annexation law in Missouri, which recognizes that

had occurred in either the governmental structures or the competing interests of St. Louis County and its municipalities since *Graeler I* and *II*,[105] the county urged the court to reaffirm the interests of St. Louis County as a community in determining the reasonableness of Town and Country's annexations.[106] A sharply divided court,[107] however, rejected this appeal, overruled the *Graeler* cases, and concluded that the county's interests were no longer factors for judicial review.[108]

In reaching its decision, the supreme court placed tremendous weight on the dual election provision added by the legislature after

---

in highly urban communities where the county government provides municipal type services and has an effective governmental organization, the interest of the county as a community must be taken into account. . . ." *Id.*

The City of Town and Country argued that since *Graeler*, the dominant role of St. Louis County in annexation litigation has "largely dissipated." *See* Brief for Appellant City of Town and Country at 59, City of Town and Country v. St. Louis County, No. 42324, slip op. (Mo. Ct. App. 1982). In support of its position, the city noted several cases in which the county unsuccessfully opposed annexations and lost. *Id. See, e.g.*, City of Des Peres v. Stapleton, 524 S.W.2d 203 (Mo. Ct. App. 1975); St. Louis County v. Village of Peerless Park, 494 S.W.2d 673 (Mo. Ct. App. 1973); Hudson Community Ass'n v. City of Ferguson, 456 S.W.2d 581 (Mo. Ct. App. 1970); City of Creve Coeur v. Brame, 446 S.W.2d 173 (Mo. Ct. App. 1969); City of Creve Coeur v. Huddleston, 405 S.W.2d 536 (Mo. Ct. App. 1966); Witt v. City of Webster Groves, 398 S.W.2d 16 (Mo. Ct. App. 1965). *But see Town and Country*, 657 S.W.2d at 611 n.3 ("These cases do not signal an abandonment of the requirement in the *Graeler* decisions to consider the interest of the county as a community").

105. *See* Brief, St. Louis County, *supra* note 104, at 9, 11. "There has been no cogent showing that there has been a material change in governmental structures or in the competing interest of a highly urbanized county which provides comprehensive, municipal type services." *Id.*

106. *Id.* at 14. The county recognized that its interest is only one factor the courts should consider in evaluating the reasonableness of an annexation, but argued that "the 'county interest' principle enunciated in *Graeler I* should be neither eliminated nor modified. Rather annexations should turn, as they have always turned, on their merits." *Id.*

107. The Missouri Supreme Court split four to three. Justice Higgins, joined by Justices Blackmar, Donnelly and Lowenstein (special judge) wrote the majority opinion. Justice Gunn, joined by Chief Justice Rendlen and Justice Billings, dissented. Justice Welliver did not take part in the decision.

108. *See* 657 S.W.2d at 606. The supreme court indicated that the legislative changes in the annexation scheme modified judicial concern for the county governments' interest in annexation. *Id.* The *Town and Country* court limited its review to determining whether substantial evidence supported the reasonableness and necessity of a city's decision to annex. *Id.* at 605. The court added that if there is substantial evidence that an annexation is reasonable and necessary, then the issue is at least debatable and the court will therefore uphold the city's action. *Id. See also supra* notes 30-32 and accompanying text (discussing the fairly debatable standard in Missouri annexation cases).

Graeler I and *II*.[109] First, the court indicated that the legislature's actions modified the judiciary's role in evaluating the reasonableness of a proposed annexation.[110] At the time the supreme court decided the *Graeler* cases, residents of unincorporated areas had no voice in the annexation process.[111] The judiciary had to safeguard the interests of residents in unincorporated areas by reviewing the effect of a proposed annexation on the unincorporated community.[112] After *Graeler*, however, the legislature established the dual election requirement,[113] which gave residents in areas targeted for annexation the opportunity to vote in favor of or in opposition to a proposed annexation.[114] The court noted that the legislature had modified the judiciary's burden in that residents directly affected by an annexation could now represent their own interests in an election.[115] Second, the court determined that the right to vote gave residents affected by an annexation the opportunity to consider the interests of St. Louis County as a community.[116] Participation in the political process permitted residents in unincorporated areas to consider issues affecting them as residents of St. Louis County.[117] The court concluded that the residents of the annexing municipality and the unincorporated area must determine at the ballot box the interests of all parties.[118] Noting that judicial consideration of

109. *See* 657 S.W.2d at 605. *See also supra* notes 67-71 and accompanying text.

110. *Id.*

111. *Id. See supra* note 51.

112. 657 S.W.2d at 605. *See supra* notes 51-53 and accompanying text.

113. 657 S.W.2d at 605. *See supra* notes 67-69 and accompanying text.

114. 657 S.W.2d at 605. The *Town and Country* court noted that since *Graeler*, "the legislature has acted to give affected residents a determinative voice in the annexation process." *Id.*

115. *Id.* "Absent approval by the voters in both the unincorporated area(s) and the annexing municipality, the municipality cannot perfect its proposed annexation. And because the residents who are directly affected by an annexation exercise such control, the burden of the judiciary has been modified." *Id.*

116. *Id.*

117. *Id.* These issues included: the need for municipal services in the parcels sought to be annexed; whether the county adequately met their present needs; whether the county's services should be supplanted by city services; and whether the proposed annexation would impair or improve the county's interests. *Id.* The court indicated that voters "had to weigh the impact of the annexation on the totality of circumstances and consequences inherent in the choice of governmental auspices." *Id.* The court did not identify the specific interests of the county that voters should consider when voting on a proposed annexation.

118. *Id.* The court determined that pertinent statutes enacted since the *Graeler* cases require the residents of affected areas to make any efforts for or against annexa-

the county's interest was no longer necessary,[119] the court held that Town and Country's annexations were reasonable under the Sawyer Act.[120]

A strong dissent by Justice Gunn urged the court not to abandon the precedents established in the *Graeler* cases. The dissent believed that the legislature's separate election amendments did not affect the principles of the *Graeler* cases.[121] The dissent argued that the need for the judiciary to consider the county's interests was more acute now than when the court decided the *Graeler* cases.[122] The dissent emphasized the *Graeler* court's distinction between annexations in urban and rural counties[123] because the services provided by St. Louis County to unin-

---

tion. *Id.* at 605-06. The majority perhaps believed that the county should wage a political campaign to protect its interests prior to an annexation election. This proposition, however, presents several problems. First, it pits the county against the city in a bidding war for governmental services, which may not be within the best interests of residents living in other unincorporated areas that cannot vote in the annexation election. Second, it forces governmental entities to find ways to finance a campaign in favor of or against an annexation referendum, potentially skirting the limitation on the use of public funds for a questionable public purpose. *See also infra* notes 159-62 and accompanying text.

119. The court found that Missouri's annexation statutes do not explicitly address the interests of the county government "vis-a-vis" other governmental entities in annexation cases. 657 S.W.2d at 606. The county's interests "are now permitted to be considered in the first instance by residents of affected areas as part of the totality of circumstances and consequences [surrounding a proposed annexation]." *Id.* The court further supported its view by finding "that St. Louis County and municipalities located therein are not competing governmental entities . . . they are coexisting governmental entities . . . [that] serve the general interests of these residents, not to engage in competition for the right to collect revenues, provide services and the like." *Id.*

120. *Id.* at 608. The supreme court concluded that "[t]he trial court properly assessed the evidence submitted and concluded that the reasonableness of the annexations was fairly debatable. Insofar as the *Graeler* cases are inconsistent with the standard of review as enunciated in subsequent cases . . . they are overruled." *Id.*

121. *See id.* at 609 (Gunn, J., dissenting).

122. *Id.* at 612 (Gunn, J., dissenting). The dissent noted that annexation cases in St. Louis County involved unique circumstances. "Specifically, the City of Town and Country is substantially less sophisticated in development and as a provisioner of municipal services than the unincorporated area of St. Louis County which it seeks to bring into the fold of its limits and limited services." *Id.* at 610 (Gunn, J., dissenting).

123. *See id.* at 610-11. Justice Gunn argued that the courts must treat annexations in highly urbanized St. Louis County differently than it considers annexations in less developed areas. Quoting from City of St. Peters v. Kodner Dev. Corp., 525 S.W.2d 97, 99 (Mo. Ct. App. 1975) and the *Graeler* decisions, Justice Gunn reasoned that some of the distinctions found in urban areas buttress the county's interest in annexation cases. People generally do not associate themselves with the particular municipality they live in, rather they regard themselves as part of the larger metropolitan area. *Id.* at 611.

corporated areas had become more sophisticated and highly developed.[124] Recognizing the vitality of *Graeler's* "county as a community concept," Justice Gunn argued that the court must consider St. Louis County's interest and weigh them against the claims of the city.[125] In the dissent's view, Town and Country sought the unincorporated territory to increase its tax revenues and gain a stronger position against further commercial development near its borders.[126] The county lost substantial tax revenues, planning and control over valuable property designated for commercial development.[127] Balancing these competing interests, the dissent concluded that the evidence failed to support a fairly debatable showing that the annexations were reasonable and necessary.[128]

The *Town and Country* decision marked a significant departure from

---

Proximity and access to the metropolitan job market are primary considerations. *See id.* Thus, certain standards established by prior cases to determine the reasonableness of an annexation in rural areas provide minimal guidance to courts reviewing annexations in urban or suburban areas. *See id.*

124. *Id.* at 612.

125. *Id.* Unlike his predecessors in the *Graeler I, II* and *Champ* decisions, Justice Gunn specifically identified St. Louis County's interests in the annexation proposed by the City of Town and Country. The county would lose substantial tax revenues and control of planning and development of the unincorporated area. *Id.* at 612-13.

126. *Id.* at 613. Evidence reviewed by the dissent showed that by annexing unincorporated lands, the city would derive an additional $77,500 to $115,000 a year in taxes. *Id.* After the city, through its Board of Aldermen, decided to annex the adjacent areas, the city explained its decision to the voters in an open letter to Town and Country residents. The letter explained that through annexation, Town and Country would: "1) Gain a sizeable commercial tax base and a growing residential tax base; 2) Achieve vital zoning protection on its borders; 3) Insure the survival of Town and Country beyond the mid 1980s; 4) Reduce real estate taxes; 5) Avoid imposition of nondeductible taxes." *Id. See also* Reply Brief for Appellee St. Louis County at 8-9, City of Town and Country v. St. Louis County No. 42324 slip op. (Mo. Ct. App. 1982) ("the express, improper reason for the proposed annexations—the development of a commercial tax base at a distance from the present boundaries of Town and Country, gerrymandered, irregular boundaries . . . would keep out of the proposed enlarged municipality—half-acre residences, planned environmental units, condominiums, and apartments which were thought to detract from Town and Country's luxury life-style") [hereinafter cited as Reply Brief, St. Louis County]. *Id.*

127. 657 S.W.2d at 612. St. Louis County claimed that its aggregate loss of tax revenues from the Town and Country annexations would begin at one million dollars and impact most heavily upon the county Departments of Parks and Recreation, Highways and Traffic, and Police. *Id.* In addition, Town and Country would get a windfall profit from sales tax revenues. *See* Reply Brief, St. Louis County, *supra* note 126, at 18-19.

128. 657 S.W.2d at 613.

the Missouri Supreme Court's previous view of annexations in urban counties and set the stage for major changes in St. Louis County's annexation scheme. Although the long-term effects of the *Town and Country* decision are for now unclear, some attempt can be made to assess the case's impact on St. Louis County and its municipalities, and explore the deficiencies of the annexation process as it now stands.

III. THE MISSOURI ANNEXATION SCHEME: IMPACT AND DEFICIENCIES

A. *Impact*

The *Town and Country* decision permitted municipalities in St. Louis County to pursue new annexations of unincorporated territory. By eliminating the review of the county's interest in annexation actions, the Missouri Supreme Court removed an obstacle that had inhibited annexations for more than twenty years.[129] In removing this barrier, however, the court has also sharpened the conflict between municipalities, the county and the unincorporated areas targeted for annexation.[130]

Aggressive competition for the rich commercial real estate lying in St. Louis County's unincorporated areas underlies this conflict.[131] Because the county relies on tax revenues from commercial and industrial developments in unincorporated areas to pay for the services and benefits it provides, municipal annexation could erode the county's financial base and undermine its ability to govern effectively.[132] In the wake of the *Town and Country* decision, municipalities can now eye annexa-

129. Wendel, *Annexations: Problems and Prospects*, St. Louis Post-Dispatch, Feb. 27, 1984 at A17, col. 2. [hereinafter cited as Wendel, Post-Dispatch]. The remarks by the mayor of Overland, made after the *Town and Country* decision, are indicative of the attitudes harbored by several municipalities in St. Louis County. The *Town and Country* case has "opened the doors," spurring Overland to revive its dormant annexation plans. *See* St. Louis Post-Dispatch, Sept. 29, 1983, at N1, col. 4.

130. *See supra* notes 47-48 and accompanying text.

131. *See* St. Louis Post-Dispatch, Sept. 25, 1983, at B1, col. 5; St. Louis Post-Dispatch Oct. 17, 1983, at A18, col. 2.

132. *See* St. Louis Post-Dispatch, Sept. 30, 1983, at A14, col. 2. Gradually, annexations could force the county to surrender the attractive part of its tax base, leaving it with inadequate resources to deliver services and provide effective government. *Id. See also supra* note 62 and accompanying text. St. Louis County Executive Gene McNary remarked that the *Town and Country* decision permits a municipality to look along its boundaries and annex a nearby commercial establishment merely to increase its tax revenue. *Id.*

tions of highly developed unincorporated areas as a new revenue source that potentially could reduce residential property taxes and maintain or improve the city's financial stability.[133] Many municipalities have announced plans either to annex unincorporated territory, find such territory to annex or revive previous annexation proposals.[134] Prospectively, these annexations could reduce significantly the county government's tax revenues,[135] and force more than half of the county's municipalities to raise property taxes.[136]

In 1984 the Missouri Legislature attempted to discourage this wave of proposed annexations by modifying the county sales tax distribution system and thereby reducing the tax benefits created by annexing unincorporated areas.[137] The county sales tax is a major source of revenue that is often at the base of the annexation conflict. The state collects

133. *See id.* Following the *Town and Country* decision the mayor of the city promised to reduce the property tax by using the sales revenue gained by annexation. Post-Dispatch, Sept. 25, *supra* note 131.

134. *See* St. Louis Post-Dispatch, Sept. 29, 1983, at N1, col. 4 (Overland aldermen revive dormant annexation plans and vote to proceed with plans to annex 4200 acres of commercial, industrial and residential land); St. Louis Post-Dispatch, Oct. 5, 1983, at A1, col. 2 (Creve Coeur plans to annex industrial and retail entertainment complex); St. Louis Post-Dispatch, Oct. 11, 1983, at A1, col. 1 (Olivette and Bridgeton propose annexation of commercial or industrial areas); St. Louis Post-Dispatch, Oct. 13, 1983, at N1, col. 1 (Fenton forms annexation committee; Florissant moves annexation up on agenda for new general plan); St. Louis Post-Dispatch, Oct. 26, 1983, at A3, col. 2 (Village of Twin Oaks formulates plans to annex residential and commercial land); St. Louis Post-Dispatch, Oct. 27, 1983, at A1, col. 4 (Black Jack proposes annexation to triple city size, including shopping center with 87 retail stores); St. Louis Post-Dispatch, Nov. 8, 1983, at A3, col. 2 (Valley Park proposes study of annexation for business expansion); St. Louis Post-Dispatch, Nov. 10, 1983, at N3, col. 2 (Webster Groves moves to annex commercial property in south St. Louis County).

135. *See* St. Louis Post-Dispatch, Oct. 16, 1983, at B1, col. 4. The St. Louis County Planning Department estimated it would lose $2.5 million from Creve Coeur's proposed annexations alone. *Id.*

136. *Id.* There are currently 90 municipalities in St. Louis County. St. Louis County estimated that just three of the many proposed annexations would cause 50 municipalities that share in a sales tax pool to raise property taxes by an average of 22.6 cents for every $100 of assessed valuation. Some municipalities that do not have a property tax would have to impose one. St. Louis County based these figures on the effect of Eureka's annexation of the Six Flags entertainment park and other annexations by Town and Country and Creve Coeur. *See* St. Louis Post-Dispatch, Oct. 16, 1983, at B1, col. 4.

137. *See* MO. REV. STAT. §§ 66.610-.620 (Supp. 1984); Post-Dispatch, Oct. 13, 1983, *supra* note 134. The state collects a one percent sales tax from incorporated and unincorporated parts of the county. *Id.* The legislature also amended the annexation statute by imposing an additional procedural requirement on municipalities annexing unincorporated areas in St. Louis County. The legislature suspended the effective date

this tax and then distributes it to the county, and the municipalities within the county, to help finance local government operations and to provide needed services.[138] Under the present system there are two methods of distributing sales tax revenue in St. Louis County. Municipalities may either elect to keep the sales tax revenues generated within their boundaries, or participate in a tax pool in which the revenues are divided between pool municipalities and the county based on population.[139] Municipalities electing to keep the sales tax revenues can gain additional revenues by annexing unincorporated areas with lucrative tax sources.[140] Pool municipalities and the county, however, must then share a smaller portion of funds collected from the county's remaining commercial areas.[141]

Under the legislature's modified scheme, a municipality which annexes an unincorporated area that participates in the sales tax pool receives part of the sales tax revenue generated in the annexed area. The annexed unincorporated area remains part of the pool for the purpose of future allocations of county sales tax revenue.[142] After the effective date of an annexation, the annexing city receives only a portion of the sales tax revenue generated in the annexed unincorporated area, based upon the ratio of the unincorporated area's population to the total pop-

---

of any annexation in St. Louis County for one year after approval by the voters. *See* MO. REV. STAT. § 71.870 (Supp. 1984). The provision provides that:

> [N]o annexation in a first-class charter county which has a population of at least nine hundred thousand shall *become effective sooner than one year after the vote for annexation* if the question of annexation is carried by a majority of the votes cast by the two groups of voters.

Id. (emphasis added).

138. *See* MO. REV. STAT. §§ 66.620-.622 (Supp. 1984). *See also* Wendel, Post-Dispatch, *supra* note 129. Under the present tax distribution system, revenues are divided between the county and the 51 cities that participate in the tax pool, and 39 cities, commonly called point-of-sale cities, that keep sales revenues generated within their borders. The distribution formula for the county and its pool cities is based on population. In 1982 pool governments shared $30.7 million, including $19 million that went to unincorporated areas of St. Louis County. Post-Dispatch, Oct. 16, *supra* note 135.

139. *See* MO. REV. STAT. §§ 66.620-.622 (Supp. 1984).

140. *See supra* notes 126-27 and accompanying text. *See also* St. Louis Post-Dispatch, Sept. 25, *supra* note 131 (Town and Country's annexation will bring the city two million dollars in sales tax revenues currently shared by the county and other municipalities); St. Louis Post-Dispatch, Oct. 6, 1983, at A14, col. 2 (Creve Coeur is point-of-sale city; annexation called a "tax grab").

141. *See* Wendel, Post-Dispatch *supra* note 129. *See also* Post-Dispatch, Oct. 17, *supra* note 131 (annexations could leave county with unincorporated areas that produce little income but are expensive to serve).

142. *See* MO. REV. STAT. §§ 66.620-.622 (Supp. 1984).

ulation of pool municipalities, including residents in the county's unincorporated areas.[143] By basing the allocation formula on population, the legislature sought to discourage a municipality from annexing an unincorporated area primarily for tax revenues. Through this distribution scheme, unincorporated areas that produce substantial sales tax revenue, but are sparsely populated, become less desirable targets for municipal annexations. In theory, the restructured tax allocation system will provide annexing municipalities only with the proportion of additional revenues necessary to provide municipal services to residential households in the annexed areas, thus protecting the revenues needed by the county and municipalities that participate in the tax pool.

While the legislative changes in the sales tax distribution system may achieve the limited goal of reducing the number of annexations motivated solely by tax revenues, the changes are unlikely to stop the competition between municipalities for unincorporated, commercially developed territory.[144] Municipalities seeking tax revenues from major commercial centers or industrial facilities lying in unincorporated areas simply can include a larger residential population in their proposed annexations, thus decreasing the revenues allocated to the county and its pool municipalities.[145] Faced with diminished tax revenues, the county and many municipalities without tax rich areas to annex will have to find other funding sources to replace those lost through annexations. Inevitably, these governmental entities will have to impose additional tax burdens on their residents or deprive their communities of essential government services.[146]

---

143. *Id.* The statutory section provides:

> After the effective date of the annexation, the annexing city, town or village shall receive a percentage of the Group B distributable revenue equal to the percentage ratio that the population of the annexed area bears to the total population of Group B and such annexed area shall not be classified as unincorporated area for determination of the percentage allocable to the county.

Id.

144. *See supra* notes 131-33 and accompanying text.

145. Extending municipal services to a greater number of residents in unincorporated areas may improve the cost effectiveness of providing such services. In other words, the proportionate share of sales tax revenue may exceed the additional cost of providing services to the additional households, thus netting the annexing municipality tax revenue from its annexation.

146. *See* St. Louis Post-Dispatch, Nov. 7, 1983, at A14, col. 2. "A few well-to-do communities [will] enjoy the lion's share of the sales tax while the other communities and the county government would find themselves hard-pressed to pay for routine services." *Id. See also supra* note 136 and accompanying text.

In sum, the legislature's response to the wave of annexations in St. Louis County following the *Town and Country* decision is inadequate. By restructuring the county sales tax scheme the legislature avoided the fundamental problems underlying the annexation conflict: the inequities between wealthy municipalities, poor municipalities, the county government, and residents in unincorporated areas;[147] the "whittling away" of county government;[148] and recognition of the urban county as a community in annexation disputes.[149]

B. *Problems Posed by the Present Annexation Scheme*

Missouri's annexation law is currently inadequate to meet the needs of its metropolitan communities. By abandoning *Graeler I* and *II's* concept of the urban county as a community,[150] the Missouri Supreme Court failed to recognize the central role the urban county government plays in providing community services, promoting orderly growth through regional planning and zoning and representing the interests of a metropolitan region.[151]

Moreover, the current annexation scheme ignores the interests of nearly half a million residents that live in unincorporated areas of St.

147. *See* Post-Dispatch, Oct. 17, *supra* note 131 (present arrangement threatens equitable access to the tax base). Prior to the changes in the county sales tax distribution scheme, Professor Wendel noted that haphazard annexation of unincorporated areas with lucrative tax sources, which left the largest urban population in the state with a much-diminished tax base, portends an unpleasant future for St. Louis County. Some municipalities would become richer, and additional rich municipalities would be created. Wendel, Post-Dispatch, *supra* note 129.

148. *See supra* notes 58-63 and accompanying text.

149. *See supra* notes 43-46, 54 and accompanying text.

150. *See id.*

151. *See supra* note 3 and accompanying text. *See also* Note, *The Urban County, A Study of New Approaches to Local Government in Metropolitan Areas*, 73 HARV. L. REV. 526, 527 (1960). The commentator notes that the county government is the "appropriate repository for increasing demands in metropolitan areas." *Id.* The benefits of county government are roughly coextensive with the needs of the metropolitan community. 1) Resources are utilized more effectively if placed at the disposal of the governmental unit having area-wide responsibilities; 2) government efficiency and economy are improved by eliminating duplicate operations in many jurisdictions; 3) county government is coextensive with organic metropolitan problems and could improve planning and capital improvements; and 4) well-developed ties between the state and county government can facilitate problem-solving. *Id.*; Selected Bureau Drafts, *An Act to Establish Standards and Procedures for Municipal Boundary Adjustment*, 2 HARV. J. LEGIS. 239, 241-42 (1965) (noting annexation procedures fail to recognize that although geographic and economic communities are divided into several government entities, their problems are interconnected and the areas are interdependent).

Louis County.[152] Annexations affect not only residents in the annexing municipality and residents in the proposed annexation area, but they also affect residents in unincorporated areas not targeted for annexation. Because the court refused to consider the county's interest in assessing the reasonableness of annexation proposals, the county cannot intervene in declaratory judgment proceedings.[153] In effect the legislature has precluded residents in unincorporated areas, who could be seriously harmed by unreasonable annexations, from protecting their interests via the judicial process.

Although annexing municipalities in urban counties must follow the requirements of the Sawyer Act,[154] there is virtually no effective check on the reasonableness of a city's annexation. Under the Act, judicial review is very deferential to actions taken by local legislative units.[155] The judiciary can consider only whether the evidence establishes that the reasonableness of and necessity for an annexation is fairly debatable.[156] While the city has the burden of proof, the burden is met easily by presenting at least some evidence that the annexation has a reasonable basis.[157] Because it is unlikely that the judiciary will substitute its judgment for that of the local governing body, annexations will proceed with minimal judicial scrutiny.[158] Consequently, only annexing municipalities and voters in the municipalities and areas sought to be annexed will control the annexation process. These three entities will

152. *See* Wendel, Post-Dispatch, *supra* note 129. Approximately 975,000 residents live in St. Louis County. Some 560,000 live in the county's municipalities in about 40% of the county's 500 square miles. Between 1970-1980, the unincorporated portion of St. Louis County experienced a 27% increase in population which now stands at about 413,000. *Id.*

153. *See* Sandalow, *supra* note 4, at 694. Sandalow identifies three distinct interests that annexation directly affects: the municipality, the annexed territory and the larger area from which the annexed territory is taken. *See also* Note, *Annexation—Key to Arizona's Regional and Local Planning Problems*, 1972 L. & SOC. ORD. 645 (state traditionally recognizes the interests of the municipality, the inhabitants of the territory to be annexed and the county).

154. *See supra* note 101. The attorney for St. Louis County remarked following the *Town and Country* case, that it is "questionable whether the county could file suit against an annexation or intervene in one brought by other parties." St. Louis Post-Dispatch, Oct. 5, 1983, at A1, col. 2.

155. *See supra* notes 108-10 and accompanying text.

156. *See supra* notes 110-12 and accompanying text.

157. *See supra* notes 29-30, 119-21, 128 and accompanying text.

158. One commentator notes that "nearly all non-routine annexations involve clearly debatable issues of wisdom and necessity." *See* Woodroof, *supra* note 2, at 750.

Country,[166] rejected a challenge by the county, and by voters who reside in unincorporated areas of the county, to invalidate the voting franchise system for annexation elections.[167]

The county claimed that denying voters who reside outside the targeted area the right to vote in annexation elections violates the equal protection clause of the fourteenth amendment.[168] The district court, in rejecting the county's claim, determined that Missouri's voting restrictions for annexation elections are valid so long as the restrictions rest on a rational basis.[169] The court held that a rational basis exists

166. 590 F. Supp. 731 (E.D. Mo. 1984).

167. *See id.* at 733-34. *See also supra* notes 67-71 and accompanying text for an explanation of Missouri's annexation election statute.

168. 590 F. Supp. at 734. St. Louis County argued that because the *Town and Country* decision held that the court need not consider the county's interest as a whole when determining the reasonableness of a proposed annexation, the annexation proceedings available in state court did not provide adequate protection for their interests. *Id.* Furthermore, the county claimed, the state's annexation election law disenfranchises residents of unincorporated areas and does not protect the substantial interests they have at stake in a proposed annexation. *Id.*

169. *Id.* at 737-38. The Eastern District Court of Missouri rejected the county's contention that it review the annexation election law under the compelling state interest standard. *Id.* at 736.

Annexation elections are special, or "single-shot" elections, held for the limited purpose of changing municipal boundaries. Unlike voters in local elections that determine government policy decisions, for example elections for local representatives or referenda, the voters in annexation elections do not exercise the type of control over nonvoting county residents necessary to meet the equal protection clause's one-man, one-vote principle.

A long line of Supreme Court cases supports the district court's application of the rational basis standard. In Town of Lockport v. Citizens for Community Action, 430 U.S. 259 (1977), the Supreme Court held the one-man, one-vote principle applicable to elections for legislative representatives is "of limited relevance . . . in analyzing the propriety of recognizing distinctive voter interests in a 'single shot' referendum." *Id.* at 266. The Supreme Court also established in *Lockport*, and in other cases, that the state can grant or deny the franchise in special elections to those it determines have a sufficient or insufficient stake in the outcome. The Court applies a rational relation test to the voting scheme of an annexation statute so long as the scheme does not affect a suspect classification or a fundamental interest. *See* Holt Civic Club v. City of Tuscaloosa, 439 U.S. 60, 69 (1978) ("Bona fide residence alone, however, does not automatically confer the right to vote in all matters, for at least in the context of special interest elections, the State may constitutionally disenfranchise residents who lack the required special interest in the subject matter of the election"); Salyer Land Co. v. Tulare Lake Basin Water Storage Dist., 410 U.S. 719 (1973) (statute designating only landowners as qualified to vote for special district's board of directors upheld). *But cf.* City of Phoenix v. Kolodziejski, 399 U.S. 204 (1970) (statute granting franchise solely to taxpayers in general obligation bond elections denied equal protection); Cipriano v. City of Houma, 395 U.S. 701 (1969) (statute granting franchise solely to property taxpayers in elections

because the legislature properly could conclude that a proposed annexation would most directly affect residents of the annexing municipality and residents of the proposed annexation area.[170]

The *Town and Country* decisions in state and federal court will frustrate any further attempts to reform the annexation scheme through the judicial process. Because the state has unlimited power to control the annexation process,[171] the legislature must assume the responsibility of initiating reforms.

C. *Eliminating Judicial Review*

The legislature must alter the judiciary's role in the annexation process. Currently, state courts must grant a declaratory judgment approving an annexation before it can proceed.[172] This is an inefficient and ineffective method to ensure the reasonableness of municipal annexations. Annexations produce conflicts that can lead to extensive litigation, thereby clogging crowded court dockets.[173] Delays associ-

---

called to approve revenue bonds denied equal protection); Kramer v. Union Free School Dist., 395 U.S. 621 (1969) (statute restricting right to vote in school district elections unconstitutional). *See generally* Gelfand, *The Burger Court and the New Federalism: Preliminary Reflections on the Roles of Local Government Actors in the Political Dramas of the 1980's*, 21 B.C.L. REV. 763 (1980) (Pattern of broad judicial deference to state and local government restrictions on the franchise); Hagman & Disco, *One Man, One-Vote as a Constitutional Imperative for Needed Reform of Incorporation and Boundary Change Law*, 2 URB. LAW. 459 (1970) (state and local statutes dealing with annexation may be constitutionally suspect); Martin, *The Requirement of Concurrent Majorities in a Charter Referendum: The Supreme Court's Retreat from Voting Equity*, 16 DUQ. L. REV. 167 (1977-78) (reviewing Supreme Court decisions affecting local elections); Note, *The Right to Vote in Municipal Annexations*, 88 HARV. L. REV. 1571 (1975) (overview and analysis of constitutionality of limiting franchise in annexation elections).

170. 590 F. Supp. at 738-39.

171. *See* Hunter v. City of Pittsburgh, 207 U.S. 161 (1907) (establishing the general principle that municipal corporations are subdivisions of the state). *Hunter* held that states had plenary power to control, modify or withdraw all powers conferred upon municipalities. *Id.* at 178. For a more recent enunciation of the *Hunter* principles, see Rogers v. City of Denver, 161 Colo. 72, 419 P.2d 648 (1966) (en banc); State *ex rel.* Bowen v. Kruegal, 67 Wash. 2d 673, 409 P.2d 458 (1965) (en banc). *Hunter* has been limited when applied to annexation issues touching upon racial discrimination. *See, e.g.*, Gomillion v. Lightfoot, 364 U.S. 339 (1960) (state plenary power does not extend to racially discriminatory deannexation); *cf.* Citizens Comm. to Oppose Annexation v. City of Lynchburg, 400 F. Supp. 68 (W.D. Va. 1975), *modified on other grounds*, 528 F.2d 816 (4th Cir. 1975), *cert. denied*, 423 U.S. 1043 (1976) (*Hunter* still valid despite some exceptions).

172. *See supra* notes 15, 68 and accompanying text.

173. *See supra* notes 156-59 and accompanying text. *See also Annexation and Other*

ated with annexation proceedings also contribute to inefficient planning and budgeting.[174]

Additionally, judicial review is an ineffective method of preventing bad annexation proposals. Frequently judges do not have sufficient expertise to evaluate the standards applicable to a particular annexation.[175] Furthermore, because declaratory judgment proceedings exclude contemplation of county interests and courts refuse to consider how an annexation may affect residents throughout the metropolitan community, judicial oversight does little to ensure that annexations will promote orderly growth and protect the interests of all urban county residents.[176]

By removing the courts from the early stages of the annexation process, the legislature will accomplish three important goals. First, the legislature can improve judicial economy. Second, it can eliminate the concern that the judiciary will exceed its scope of review and unnecessarily interfere with actions taken by local governmental units. Finally, it can reduce the likelihood of unreasonable annexations.[177]

D. *Establishing An Independent State Board*

After abolishing the judiciary's role in annexations, the legislature should create an independent agency at the state level, called the state annexation review board, to review annexation proposals.[178] In effect, the agency's board of commissioners would replace the judiciary in determining whether an annexation is reasonable and necessary. Like the present annexation scheme, an annexation would proceed after the municipality passes a resolution declaring its intention to annex adjacent territory. Following approval by the local governing body, the city

---

Municipal Boundary Changes (Survey of Developments in Virginia Law 1978-1979), 66 VA. L. REV. 329, 330 (1980) (annexation litigation is protracted and expensive).

174. *See* Mandelker, *Municipal Incorporation and Annexation: Recent Legislative Trends*, 21 OHIO ST. L.J. 285 (1960). As early as 1960, Professor Mandelker recognized the link between lengthy annexation proceedings and inefficient planning.

175. *See* Note, *supra* note 153, at 659.

176. *See supra* notes 154-58 and accompanying text.

177. *See* Woodroof, *supra* note 2, at 771.

178. *See generally* Note, *supra* note 153 (advocating community development council at the state level); Note, *Municipal Annexation in Ohio*, 14 AKRON L. REV. 661 (1981) (reviewing states' annexation statute and favoring greater administrative discretion); Selected Bureau Drafts, *supra* note 151, at 242-65 (advocating and discussing proposal to establish municipal boundaries and supervise municipal annexation through State Board of Adjustment).

would submit the annexation proposal to the state review board. The board would schedule public hearings to give all interested parties the opportunity to participate in the decision-making process. Witnesses could include representatives of the annexing city and the county in which the city is located, regional planners and other development experts, representatives of other municipalities within the county, and residents and property owners of the unincorporated territory. After reviewing the facts involved in a particular annexation and considering the views of the hearing participants, the agency would determine if the annexation should proceed.

To ensure that a proposed annexation is reasonable, the legislature should provide the state review board with general standards and specific criteria to apply when reviewing annexation proposals.[179] In addition to the interests of both the annexing municipality and the area proposed for annexation, these guidelines should consider the effects of the annexation on the county government and its role in the county, regional planning and orderly growth, consistent zoning, the efficient delivery of local services and the tax structure.[180] If the board approves an annexation after considering these factors, the annexing municipality and the unincorporated territory targeted for annexation should conduct elections at which the voters could voice their opinions on the proposed annexation.[181] If the review board rejects an annexation proposal, the proponents of the annexation should have the right to challenge the agency's decision in court. The legislature, however, should limit judicial review to determining whether the agency abused its discretion in applying the statutory annexation standards to the evidence in the record. Court action should be the only means available to proponents to challenge an unfavorable board decision. Therefore, no annexation proposals should appear on the ballot until the board has approved them.

E. *Advantages of the State Review Board*

The independent agency alternative has several advantages over the current annexation scheme.[182] First, it will inject greater expertise into an increasingly complex decision-making process. Drawing on the ad-

179. *See* Woodroof, *supra* note 2, at 753-54; Selected Bureau Drafts, *supra* note 151, at 261-65.

180. *See supra* notes 63 and 151 and accompanying text.

181. *See supra* note 69 and accompanying text.

182. *See* Woodroof, *supra* note 2, at 775; Note, *supra* note 151, at 656-61.

determine if an annexation is reasonable and in the best interest of the municipality, the unincorporated area, the county and the state.

Contrary to the Missouri Supreme Court's belief in *Town and Country*, leaving annexation decisions to the elected officials of the annexing city and the voters of the annexing city and the unincorporated territory targeted for annexation does not ensure that an annexation will be reasonable or in the best interests of the county, the state and the public.[159] The political process as presently structured by the legislature precludes some voters who have interests at stake in a proposed annexation from protecting those interests at the ballot box. County residents who do not reside in the annexing municipality nor in the unincorporated area sought to be annexed cannot vote in an annexation election.[160]

Voters authorized by the legislature to participate in an annexation election will not always consider whether a proposed annexation is reasonable to county residents as a whole.[161] Instead, voters will consider whether a proposed annexation is in their own best interest and in the interest of their particular community.[162] By limiting the voting franchise in annexation elections, the legislature has precluded any consideration of the detrimental effects an annexation may have on the county's interest as a community or on the special needs of a metropol-

159. *See supra* notes 27-29 and accompanying text. *See also* Note, *supra* note 153, at 647-48. (most courts are ill-equipped to analyze the complex interrelationships involved in annexations); Woodroof, *supra* note 2, at 744 (limited judicial review of minimal value except to prevent annexation through fraud).

160. Several commentators have critized legislative schemes that base annexation decisions on the outcome of popular elections. Critics have concluded that most voters do not have the technical training necessary to consider properly all important factors. *See, e.g.*, Comment, *Annexation Elections and the Right to Vote*, 20 U.C.L.A. L. REV. 1093, 1104 (1973) ("[b]y resting the franchise with special interest groups, annexation laws . . . increase the likelihood that an unwise choise will be made"). Other critics reject annexation elections because local prejudices and jealousies become the primary factors controlling the extension of municipal boundaries. *See, e.g.*, Selected Bureau Drafts, *supra* note 151, at 242-43 (overall community needs require sacrifice of local goals to achieve greatest social utility in the area). One commentator notes that planning and rational urban growth are virtually impossible when the residents of the proposed annexation area become the final judges through annexation elections. *See* Note, *supra* note 153, at 648.

161. *See supra* note 69 and accompanying text.

162. For example, the impact an annexation will have on property taxes will be of greater concern to voters than the annexation's effect on county services. *Cf.* notes 111-12 and accompanying text (discussing court's prior role in protecting interests of residents in unincorporated areas).

itan region. Thus, the electoral process is an ineffective means to prevent unreasonable annexations.

IV. REFORMING THE ANNEXATION PROCESS: ALTERNATIVES FOR MISSOURI AND ITS URBAN COUNTIES

A. *The Goals of Reform*

Annexations in urban counties affect an entire region, not merely the particular interests of a municipality and the unincorporated area it seeks to annex.[163] Because the current annexation process does not consider the reasonableness of annexations on a regional basis,[164] states must develop a new process. The new process must protect the broader public interests of the metropolitan area with annexations that will encourage orderly growth, maintain an equitable tax structure, result from coordinated planning efforts, continue the efficient delivery of local services and reduce intergovernmental conflicts.

B. *The Path of Reform*

Restructuring the annexation scheme will require action by the state legislature. Recent decisions demonstrate that the state and federal courts will not act to reform the annexation process. At the state level, the *Town and Country* decision clearly holds that the judiciary need not consider the unique needs of urban county residents when evaluating the reasonableness of an annexation.[165] At the federal level, the Eastern District of Missouri, in *St. Louis County v. City of Town and*

---

163. *See supra* note 160. *See also* NATIONAL INSTITUTE OF MUNICIPAL LAW OFFICERS, 42A MUN. L. REV. 22, 23 (1979) ("citizens of an area to be annexed will often vote self-interest when it comes to annexation . . . to avoid municipal taxation and impede the necessary and intelligent growth of municipalities") [hereinafter cited as NIMLO].

164. *See supra* note 152. *See generally* St. Louis Post-Dispatch, Sept. 30, 1983, at A14, col. 2 (Town and Country sacrificed the broad interest of the county for the narrow interests of a few people). One commentator found annexation laws fail to recognize the interdependence of communities in an urban area:

> People often regard local governments as entities, an attitude which is based on a tendency to view local boundaries as we do national boundaries, and to regard them as somehow rooted in nature, and to think of the territories and populations they enclose as somehow composing "really" distinct communities. This imagined autonomy fails to account for the very real interdependence of communities in an urban area.

Comment, *supra* note 160, at 1121.

165. *See supra* notes 150-53 and accompanying text.

vice of planning and development experts, agency members can evaluate evidence carefully and make informed choices regarding the most appropriate municipal boundaries. Furthermore, the agency will develop additional expertise by repeatedly applying the legislature's standards and criteria to various annexation proposals. Consequently, a state review board will settle disputes more efficiently and help reduce litigation.

Second, reviewing annexation proposals at the state level will promote orderly growth. Agency board members will be removed from the competition between municipalities and the local jealousies that frustrate the planning process. Board members will evaluate annexation proposals by considering whether they are consistent with the growth and development plans of the state and region, as well as the proper development of the annexing municipality and the unincorporated area.

Third, adoption of this annexation process will balance the interests of the state, its metropolitan communities, the interests of residents in the annexing city and residents in the territory targeted for annexation. The new process protects the broader interests of the state and its developing metropolitan areas by preventing unreasonable annexations. Furthermore, by requiring elections after the agency approves a proposal, the process retains local control over annexation decisions.[183] Voters in the annexing municipality and voters in the proposed annexation area will make the final decision in the annexation process. Residents in unincorporated areas can consider whether they want to become part of an incorporated municipality, while residents in the annexing city decide whether to increase the boundaries and size of their community.

V. CONCLUSION

Missouri is typical of many states with developing metropolitan communities facing growth, planning and financial problems.[184] Annexation is one important method of resolving these problems, but the current annexation process is inadequate. The legislature must establish a new annexation plan that places annexation decisions at the state level and diminishes the role of the judiciary. A new annexation

183. The state level agency proposal has been criticized because it removes the annexation process from local control and eliminates local self-determination. *See* NIMLO, *supra* note 163, at 23.

184. *See supra* note 6 and accompanying text.

scheme will reduce local competition for unincorporated territory with valuable commercial property and ease tensions between governmental entities. By adopting an agency plan, the legislature will recognize that communities in urban counties are interdependent. Annexations must promote orderly growth not only in the cities and the unincorporated areas involved, but also in the region where they are located. Finally, a new annexation process will acknowledge the benefits provided by urban county government and safeguard the broader stake that residents have in their metropolitan communities.

COMMENTS